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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/470,571 06/06/95 HARVEY

5634.261

LMC2/0107

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EXAMINER

LUTHER, W

ART UNIT

PAPER NUMBER

2731

DATE MAILED:

01/07/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/470,571

Applicant,

HARVEY et al

Examiner

William Luther

Group Art Unit
2731



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- ☐ Responsive to communication(s) filed on Mar 4, 1999
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1035 C.D. 11; 453 O.G. 213.

shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

- ☒ Claim(s) 56-181 is/are pending in the application.
- Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 56-181 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claims _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☒ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of References Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Applicants are expected to comply fully with 37 C.F.R. 1.111 & 1.119, and M.P.E.P. 714.07, in response to this office action.

Application no.	Date	Status
-the instant disclosure, 08/470,571, ('571) is allegedly	filed 6/6/95	pending;
-a continuation of 08/113,329 ('329)	filed 8/30/93	pending;
-which is a continuation of 08/056,501	filed 5/3/93	now patent 5,335,277; ('277);
-which is a continuation of 07/849,226	filed 3/10/92	now patent 5,233,654; ('654);
-which is a continuation of 07/588,126	filed 9/25/90	now patent 5,109,414; ('414);
-which is a continuation of 07/096,096 ('87 C.I.P.) (This C.I.P. did not specifically include or expressly incorporate by reference application 06/829,531)	filed 9/11/86	now patent 4,965,825; ('825)
-which is a continuation-in-part of 06/829,531	filed 2/14/86	now patent 4,704,725; ('725)
-which is a continuation of 06/317,510 ('81)	filed 11/3/81	now patent 4,694,490. ('490)

1. All remarks, of paper no. 22 received 3/4/99, have been fully considered but are deemed moot in view of the new ground(s) of rejection. Pending claims 56-181 as well as paper no. 22's sections I, IIA-IIE, & III, are addressed within the context of the rejections below. Further, this

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action substitutes for the former action mailed, 10/19/99, as it has been amended to include the formerly applied and still applicable administrative requirement (see below in conjunction with Appendix A).

2. It is noted that Applicants have alleged, by paper no. 22, that claims from co-pending applications 08/468,641 ('641) and 08/471,024 ('024) correspond to newly added claims of the instant disclosure ('571). Therefore, because the file wrapper histories of '641 and '024 correspond to the newly added pending claims, the respective filing wrapper histories are discussed herein.

Applicants have alleged:

Applicants...point out that the....subject application claim priority back to application filed November 3, 1981, ...Consequently, the Applicants will demonstrate disclosure **only** with respect to the **"81 case"**...

Page 22 first paragraph, paper no. 12 of '641.

The present application claims priority under 35 U.S.C. 120...Consequently, the Applicants will demonstrate disclosure **only** with respect to the **'81 case**...

Page 20 second paragraph, paper no. 12 of '024.

However, when a written description rejection has been made, the law unambiguously requires that Applicants demonstrate 'full support' with respect to the instant '571 disclosure whether or not there is a priority claim under 35 U.S.C. 120.

Explanation is sought for how **"only"** demonstrating support with respect to the **"81 case"** can

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be considered to demonstrate full support, under 112 first paragraph, for an instant rejection.

35 U.S.C. 120 clearly does not entitle Applicants to claim priority unless the pending claims are fully supported by the instant '571 disclosure.

For Applicants consideration, In re Lund, 376 F.2d 982, 153 USPQ 624 (C.C.P.A. 1967) is understood to be on point. In Lund, the C.C.P.A. stated:

We recognize that, subject to compliance with 35 USC 112 and 132, the disclosure in a patent application may be deliberately supplemented or completed by reference to disclosure set forth in other patents, National Latex Products Co. v. Sun Rubber Co., 274 F.2d 224, 230, 123 USPQ 279, 283 (6 Cir., 1959); In re Chaplin, 35 C.C.P.A. 1155, 168 F.2d 85, 77 USPQ 601; In re Stauber, 18 C.C.P.A. 774, 45 F.2d 661, 7 USPQ258, to disclosure in earlier or concurrently filed copending applications, In re Ziegler, 53 C.C.P.A. 1457, 363 F.2d 888, 150 USPQ 619, 621; In re Fried, 51 C.C.P.A. 1118, 329 F.2d 323, 141 USPQ 27, which may have become abandoned, In re Heritage, 37 C.C.P.A. 1109, 182 F.2d 639, 86 USPQ 160, or, in general, to "disclosure which is available to the public," In re Heritage. As the expression itself implies, the purpose of "incorporation by reference" is to make one document become a part of another document by referring to the former in the latter in such a manner that it is apparent that the cited document is part of the referencing document as if it were fully set out therein.

Here, however, we do not think that the single sentence by which Margerison [the prior art reference] refers to his earlier application - "The present application is a continuation-in-part application of our application Serial No. 763,806, filed September 29, 1958 (now abandoned)" - is sufficient in and of itself to render Example 2 of the abandoned application part of the patent disclosure as if fully set out therein. **There is little in the term "continuation-in-part" which would suggest to the reader of the patent that a disclosure of the nature of Example 2 is present in the earlier application and that it should be considered a part of the patent specification. Thus we cannot agree that the subject matter of claim 3 is tacitly "described" in the Margerison patent within the meaning of § 102(e).**

Lund, 376 F.2d at 1370-71.

As related the following statements have also been made by Applicants:

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The following...corresponds to **the specification** support in the right column...
[cites to the '490 patent '81 disclosure omitted]

Page 30, paper no. 17, last two paragraphs of '024...

The following tables...corresponds to **the specification**...[cites to the '490 patent '81 disclosure omitted].

Page 32, 641, last paragraph.

However, explanation is sought for how the '81 disclosure can be considered "**the specification support**".

3. In view of the above and upon consideration of the entire file wrapper history for what Applicants have *alleged for pending claim support (defined below in this paragraph)*, Examiner finds that Applicants have failed to establish that pending claims are fully supported by an embodiment of the instant '571 disclosure "....in such full, clear, concise, and exact terms...." as is required under the law of 35 U.S.C. 112 1st paragraph. It is noted that Applicants have provided the PTO with conflicting pending claim support within the bodies of the following papers:

- Appendix B;

- Appendices C I thru C XXIV (216 pages);

- instant paper 12 filed 8/6/97;

- instant paper 18 filed 9/18/98;

- instant paper no. 22 filed 3/4/99;

- application 08/471,024 paper no. 12 filed 10/3/97;

- application 08/471,024 paper no. 17 filed 10/14/98;

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- application no. 08/468,641 filed 9/8/97; and
- application no. 08/468,641 paper no. 16 filed 5/18/98.

(Hereinafter, the totality of the above alleged support is referred to as *the 'alleged pending claim support'*). However, the *alleged pending claim support* contains....sentences, paragraphs, and passages that do not exist anywhere (**emphasis added**) in the entire instant '571 disclosure which Applicants allege to be the same disclosure as that filed on Sept. 11, 1987 ('87 C.I.P.). (It is noted that regardless of what may have been the intention(s) on the instant filing date of 6/6/95, it is a *factual occurrence* that cannot be changed that Applicants have 'incorporated by reference', subject matter of the '329 parent "*in it[']s entirety*" into the instant '571 disclosure for causing the instant application to be, in fact, a C.I.P; see below).

Applicants must understand that it is necessary for Examiner to find pending claim support within the four corners of the instant '571 disclosure if he is to factually conclude that 35 U.S.C. 112 1st paragraph is satisfied with respect to pending claims. Examiner must find full support for pending claims within the four corners of '571 for factually determining what effective priority date, if any, pending claims are properly afforded. Hence, it is **the manner (emphasis added)** in which Applicants have alleged that the pending claims are 'fully supported' by "**only**" citing the "**'81 case**", that compels the rejections below.

Specification

4. The amendment, of paper no.22, filed 3/4/99 is objected to under 35 U.S.C. 132 because

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it attempts to introduce new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original '87 C.I.P. disclosure is as follows:

-the amendment, of paper no. 22, to substitute --units-- for "words" page 37 (line 24) as well as the amendment to substitute --words-- for "units" (line 25) of the same page 37.

Such amendment is rejected, after considering Applicants 'alleged support for making the change' (Instant Page 14 line 32 through page 15 line 6; cited below), for the following substantiated reasons. The amendment would modify, at a later time, what had been disclosed at the earlier time of making the instant '571 disclosure (which Applicants allege is the same disclosure as the '87 C.I.P. disclosure). The amendment changes instant page 37 so that it would read in the following manner (additions are underlined; and deletions are bracketed):

Controller, 39, 44, or 47, is preprogrammed to receive [units] words of signal information, to assemble said [units] words into signal [words] units that subscriber station apparatus can receive and process, and to transfer said [words] units to said apparatus.

Instant '571 disclosure page 37 lines 22-25.

Applicants allege, at the bottom of page 1 of paper no. 22, that instant page 14 line 26 through page 15 line 6 demonstrate 'full support' for the 3/4/99 amendment. However, Examiner rejects this allegation. The alleged support (for making the change) is as follows:

The term "signal word" hereinafter means one full discrete appearance of a signal as embedded at one time in one location on a transmission. Examples of signal words are a string of one or more digital data bits encoded together on a single line of video or sequentially in audio. Such strings may or may not have predetermined data bits to

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identify the beginnings and ends of words. **Signal words may contain** parts of signal units, **whole signal units**, or groups of partial or whole signal units or combinations.

Instant Page 14 line 32 through page 15 line 6.

However, this citation is found to be evidence why instant page 37 '**should not**' (emphasis added) be changed. What was described on instant page 14 is found to be inadequate for changing '**the specific embodiment**' that was described on instant page 37 because 'the specific embodiment' of instant page 37 described '**words as containing units**'. The alleged support, is thus found insufficient for changing, at a later time of 3/4/99, subject matter of the specific embodiment that was earlier set forth by instant page 37 on the instant filing date of 6/6/95.

Moreover and giving further consideration, Examiner finds that the alleged support, for making the amendment, is little to nothing more than an invitation to experiment. The alleged support is found confusing; and, taken as a whole, it is found non-sensical. It does not set forth, "....in such full (emphasis added), clear (emphasis added), concise (emphasis added), and exact terms (emphasis added)...." (112 1st paragraph), an adequate description in itself. If there is any sense to be made from the passage corresponding to the alleged support, it is found only when focusing on a 'limited a portion of the whole'. However, when taken as a whole, *the page 14 passage* is found unclear and non-concise.

Moreover, it is recognized that the United States Court of Appeals for the Federal Circuit has already given deliberate consideration to the meaning of the term '**unit**' when identifying that a '**program unit**' equates to the 'Wall Street Week program'. The identification of what is a

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'program **unit**' served as a premise for concluding that "information of a selected television program **unit**" extended to "time and channel information" when affirming that claim 35 of U.S. patent 5,335,277 ('277) is invalid under 35 U.S.C. 102(b). It is noted that, in response to Appeal No. 97-1532, the Court stated the essential question at issue.....

The only issue presented...was whether the claim limitation "information of a selected television program **unit**" could include just the time and the channel that a particular television program was to be broadcast or whether the "information must include a unique program-identifying code"

See Personalized Media Communications, L.L.C. v. International Trade Commission et al, Appeal No. 97-1532 (decided January 7, 1999) page 4 lines 2-6.

The United States Court of Appeals for the Federal Circuit recognized, by giving what is understood to be deference to the International Trade Commission's (ITC) finding of fact, that.....

A "selected television program **unit**" is a particular television program, such as Wall Street Week.

Id. page 6 lines 1-2.

Examiner has independently considered the matter and finds the same fact. In any event and on that foundation of common sense, the United States Court of Appeals for the Federal Circuit rendered their opinion...

Thus, we conclude that the prosecution history does not prevent the term "information of a selected television **unit**" from reading on channel and time information...

Id. page 9 lines 17-19.

Examiner finds that if what earlier constituted the instant '571 disclosure (alleged by Applicants to

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be the same as the '87 C.I.P. disclosure) were to be modified at a later time of 3/4/99, it would alter the meaning of the instant term '**unit**', that was earlier disclosed on 6/6/95. Such modifications stand to cause claims to be 'erroneously constructed' by assigning mis-interpretations... ones that the instant '571 disclosure (alleged to be the '87 C.I.P. disclosure) did not afford.

In United States Court of Appeals for the Federal Circuit Appeal No. 97-1532, Personalized Media Communications, L.L.C. (PMC) (assignee of the instant disclosure) alleged that the '277 claim 35 term "information" constituted a unique identification; however, PMC's allegation was rejected by the Court...

We also reject PMC's argument that functionally claim 35 requires the controller to store information that uniquely identifies the desired television program...

Id. Page 6 lines 14-15.

The United States Court of Appeals for the Federal Circuit elaborated on why **PMC's allegation lacked accuracy**, when affirming that the term "information" did not constitute a unique code...

The written description uses the term "information as a broad term which embraces many different types of information. For example, the written description uses "meter-monitor information as a broad term to include different types of information such as "dates and times", "unique identifier codes for each program **unit** (including commercials)," "unique codes from programming (other than programming identified by program unit codes) whose use obligates users to make payments," "origins of transmissions (e.g., network source stations, broadcast stations, cable head end stations)," and "unique codes that identify the sources and suppliers of computer data."

Id. Page 7 line 16 thru page 8 line 1 citing the '277 patent, col. 29:20-41 & 60-61.

Examiner finds Applicants current allegation that instant page 14 'fully supports' the proposed

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changes to instant page 37 at the later time of 3/4/99, with respect to **the same '87 C.I.P. disclosure** and with respect to **the same term 'unit'**, to constitute little to no more accuracy than PMC's rejected allegation that '277 claim 35 afforded a construction that included a unique identification when specifically considering the '87 C.I.P. written description (and file wrapper history for determining what constitutes "information of a selected television program **unit**"). Applicants are required to cancel the new matter in the reply to this Office action.

5. The '571 disclosure was filed with the PTO on 6/5/9~~5~~⁶. The amendment, of paper no. 3 page 2, was also filed 6/5/95. It is a *factual occurrence* that cannot be changed that Applicants have 'incorporated by reference', subject matter of the '329 parent "*in it[']s entirety*" for defining their instant '571 disclosure.....

As the expression itself implies, the purpose of "incorporation by reference" is to make one document become a part of another document by referring to the former in the latter in such a manner that it is apparent that the cited document is part of the referencing document as if it were fully set out therein...

Lund, 376 F.2d at 1370-71.

As a *factual circumstance* that cannot be changed, paper no. 3 incorporated by reference it's parent "*in it[']s entirety*" on 6~~5~~/~~95~~⁹⁶ so that the portion of "*in it[']s entirety*" that is not common to the '87 C.I.P. is considered, factually, new matter to the instant disclosure. Put differently, subject matter not common (to the original '87 C.I.P. disclosure's pages 1-557 and accompanying

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figures), but which constituting the remainder of '329 application....characterized by the language "in it[']s entirety" are found, by *factual circumstance*, to benefit from an effective filing date of 6/6/95. Specifically, the instant '571 disclosure is found, by substantiated evidence, to constitute "in it[']s entirety" the following:

- all papers filed, with 08/113,329, on or before the instant '571 filing date of 6/6/95 (particularly papers 7- 8, & 10-11 and claims 1-3, 5, 7-11, 13, 16-20, 22, 23, 31-40, 42, 49-84) (not common);
- the '87 C.I.P. disclosure's 557 pages with corresponding figures (common).

As such the instant '571 disclosure is, by the above substantiated evidence, found to constitute a continuation-in-part of the 08/113,329 disclosure because the statement 'incorporation by reference' of "in its entirety" added 'in part' all papers filed therein on or before 6/6/95.

However, even though Applicants are entitled to present pending claims which derive support from the 6/6/95 subject matter which was added 'in part', such claims are only afforded the effective filing date of 6/6/95. And as a matter of course, such claim(s) are hereby rejected as being anticipated and/or obvious over:

- the 'great (x4) grand parent' '725 patent;
- the 'great(x5) grand parent' '490 patent; and
- WO 89/02682 (a related PCT publication).

So although Applicants have alleged, in interview, that it is acceptable to 'incorporate by reference' the 08/113,329 application "in it[']s entirety" so as to include 'all papers filed on or

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before 6/6/95' and still benefit from an effective filing date of the '87 C.I.P., the allegation is hereby rejected.

Oath/Declaration

6. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not state that the person making the oath or declaration in a continuation-in-part application filed under the conditions specified in 35 U.S.C. 120 which discloses and claims subject matter in addition to that disclosed in the prior copending application, acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56 which occurred between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

Claim Rejections - 35 U.S.C. § 112

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 56-181 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession

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of the claimed invention.

Whether a specification provides an adequate written description for claimed subject matter is a question of fact. Moreover, it is a question of fact as to whether pending claims recite *subject matter omitted* from the Sept. 11, 1987, disclosure even when the subject matter was included in the '81 disclosure.

-as stated above, the instant application is:

Application no.	Date	Status
-a continuation of 08/113,329	filed 8/30/93	pending;
-which is a continuation of 08/056,501	filed 5/3/93	now patent 5,335,277; ('277);
-which is a continuation of 07/849,226	filed 3/10/92	now patent 5,233,654; ('654);
-which is a continuation of 07/588,126	filed 9/25/90	now patent 5,109,414; ('414);
-which is a continuation of 07/096,096 ('87 C.I.P.) (This C.I.P. did not specifically include or expressly incorporation by reference application 06/829,531)	filed 9/11/86	now patent 4,965,825; ('825)
-which is a continuation-in-part of 06/829,531	filed 2/14/86	now patent 4,704,725; ('725)
-which is a continuation of 06/317,510 ('81)	filed 11/3/81	now patent 4,694,490. ('490)

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-no pending claim is original to the '87 C.I.P.;

-the voluminous *alleged pending claim support*, as written description for pending claims 56-181, has been considered with respect to the instant '571 disclosure. However, the alleged support is rejected because:

-the '81 written description was not specifically included in the '87 C.I.P. written description;

-the '87 C.I.P. did not expressly incorporate by reference the '81 subject matter into the '87 C.I.P.;

-that instant '571 disclosure has not been found to describe the alleged '81 support "....in such full, clear, concise, and exact terms...." as is required under the law of 35 U.S.C. 112 1st paragraph.

However, Examiner finds it trite to say that the instant '571 disclosure must contain written description for pending claims 56-181 in order to fully satisfy 112 1st paragraph, and in order to be afforded any filing date whatsoever and in view of the finding that no pending claim is original to the '87 C.I.P.

Applicants have acknowledged, in interview, that they did not include *the alleged pending claim support* either 'specifically' or by 'expressly incorporating it by reference' when originally making the '87 C.I.P. disclosure on 9/11/87. Applicants' acknowledgment is thus found to

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corroborate Examiner's analysis, of the '87 C.I.P. disclosure, and finding of the same.

Hence, in consideration of the *alleged pending claim support*, Examiner does not find 'full support' in 'an instant '571 disclosure embodiment' **"....in such full, clear, concise, and exact terms...."** as required by the law of 35 U.S.C. 112 1st paragraph. And on the basis of this finding, it is further found that it is entirely moot whether 'the cited '81 embodiment' can fully support the pending claims until such time that pending claims are found to be supported **"....in such full, clear, concise, and exact terms...."** in the instant '571 disclosure.

The following is found to be attached to the 'significance of incorporation by reference' and lack thereof. It is fact that Applicants have failed to maintain continuity of 'the entire '81 (Nov. 3, 1981), disclosure' when they filed the continuation-in-part document of '87 C.I.P. (Sept. 11, 1987). Because, the '87 C.I.P. disclosure failed to include the '81 disclosure either specifically or by an express incorporation by reference, subject matter omitted from the '87 C.I.P. disclosure, but included in the '81 disclosure, will enter the 'public domain' absolutely no later than 17 years from the patenting of the '725 patent. **Further, it is stressed that pending claims may not recite any of the omitted subject matter as doing so fails the written description requirement of 112 first paragraph unless the omitted subject matter can be found in 08/113,329 papers that were filed on or before 6/6/95. But, even if it can be found in 08/113,329, it shall then only be afforded the 6/6/95 filing date and shall be considered for rejected under 102 and 103 in view of Applicants' own publication and patents.**

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Moreover, Applicants may not amend any *pending disclosures* to include a statement of 'incorporation-by-reference' because such an amendment would improperly allow Applicants to freely circumvent the law of 112 1st paragraph. Such an amendment, if made, would constitute recapturing the subject matter which will enter 'the public domain' no later than on November 3, 2004, otherwise known as 17 years from the patenting of the last '81 disclosure a.k.a. the '725 patent. All 'omitted subject matter', now recited in pending claims, is rejected as failing the written description requirement of 35 U.S.C. 112 first paragraph ("in its entirety" excepted) because:

- Section 120 merely provides a mechanism whereby an application becomes entitled to benefit of the filing date of an early application disclosing the *same* subject matter.

Common subject matter must be disclosed, in both applications, either specifically or by an express incorporation by reference of prior disclosed subject matter;

- nothing in section 120 itself operates to carry forward any disclosure from an earlier application';

- the statement that an application is a continuation-in-part of another application is in a broad sense a "reference" to the earlier application, but a mere reference to another application is not an incorporation of anything therein into the application containing such reference for the purposes of the disclosure required by 35 U.S.C. 112. Likewise it does

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not serve to bring a disclosure within the requirements of 35 U.S.C. 120 so as to give a later application the benefit of the filing date of an earlier application;

-the later application must itself contain the necessary disclosure;

-under Section 120, no claimed subject matter is entitled to the benefit of the filing date of an earlier application unless that subject matter has been disclosed in every intervening application relied upon to establish a chain of copendency;

-Section 120 contains no magical disclosure-augmenting powers able to pierce new matter barriers. It cannot, therefore, "limit" the absolute and express prohibition against new matter;

-it is very clear that the statement that "an application is a continuation-in-part of an earlier application" fails to incorporate by reference all those portions of the earlier application that were not included in the later-filed application;

-as the expression itself implies, the purpose of "incorporation by reference" is to make one document become a part of another document by referring to the former in the latter in such a manner that it is apparent that the cited document is part of the referencing

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document as if it were fully set out therein;

-the language "continuation-in-part" is insufficient to incorporate any part (emphasis added) of a parent case. All it means is that insofar as the disclosure of the great (x5) grandparent '490 finds corresponding disclosure to all intervening 'parents', are pending claims entitled to the effective filing date of '490;

Although it is conceptually recognized that it is possible to draft pending claims to be generic to an embodiment of the '81 disclosure and an embodiment of the instant '571 disclosure which did not incorporate the '81 disclosure specifically or by reference, the following request is made:

- 1) make a 'one-to-one correspondence' between 'the original '87 C.I.P. disclosed terms' and 'pending claim terms';
- 2) make a 'one-to-one correspondence' between 'the originally disclosed '87 C.I.P. steps within a single '87 C.I.P. embodiment' and 'pending claim steps';
- 3) make a 'one-to-one correspondence' between 'the originally disclosed '87 C.I.P. processes' and 'the pending claim processes in the manner such processes are claimed' so that the 'steps' of 2) and the terms of are recognized therein;
- 4) repeat steps 1) through 3) with the '81 disclosure;
- 5) reconcile the steps 1) through 4) with each element of the *alleged pending claim support* when there is a discrepancy.

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For the benefit of successfully traversing the written description rejections made herein, **Examiner suggests that Applicants perform steps 1) -5) to an extent that they demonstrate “...in such full, clear, concise, and exact terms....”, the pending claims as proscribed by the law of 35 U.S.C. 112 1st paragraph.**

Moreover, pending claims are found to recite ‘terms whose definitions are different/diverse’ between the ‘81 disclosure and the ‘87 disclosure. However and because the *alleged pending claim support* relies on the ‘81 disclosure even though the claims recite modifications to the terms with elements of ‘87 definitions, the claims cannot be afforded any effective filing date whatsoever. If Applicants perform the above described steps 1-5 successfully, then such ‘87 modified terms will only be afforded the effective filing date of the ‘87 disclosure. This can be overcome by amending such claims with a negative limitation to delete the “modification”.

Hence, it is suggested that Applicants consider providing an enumerate list of definitions for each pending claim which recites ‘terms whose definitions are difference/diverse’ between the ‘81 and ‘87 C.I.P. disclosures for the purpose of satisfying 112 1st paragraph’s requirement that alleged invention be set forth “...in such full, clear, concise, and exact terms....”. Examples of such terms include: ‘programming’; ‘instruct’; ‘instructions’; ‘information’; and ‘data’. The following rejections are made in consideration of the totality of the discussion above.

Considering claim 56, there is no support for:

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- an interactive video apparatus;
- said interactive video apparatus having a video output device for displaying a video presentation;
- originating at said interactive video apparatus at least a first request for content to be displayed in said video presentation;
- communicating one of said at least said first request and a second request to a remote data source;
- receiving from said remote data source said data to serve as a basis for displaying said video presentation;
- processing said data at said interactive video apparatus in order to present at least one of said locally generated image and said image from said remote video source;
- displaying said locally generated image at said video device in conjunction with said image from said remote video source.

Considering claim 57, there is no support for:

- programming said interactive video apparatus;
- to perform originating;
- to perform communicating;
- to perform receiving;

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- to perform processing;
- to perform displaying.

Considering claim 58, there is no support for:

- said interactive video apparatus includes a computer;
- said step of programming comprises storing;
- storing at least one processor instruction in said computer;
- detecting an instruct signal transmitted from one of said remote video source and said remote data source;
- executing said at least one processor instruction in response to said instruct signal.

Considering claim 59, there is no support for:

- detecting said at least one processor instruction in a signal transmitted from said remote video source;
- detecting said at least one processor instruction in a signal transmitted from said remote data source;
- inputting said at least one processor instruction to said computer.

Considering claim 60, there is no support for:

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- said step of originating processing an identifier;
- said step of communicating processing an identifier;
- said step of receiving processing an identifier.

Considering claim 61, there is no support for:

- said identifier identifies mass medium programming;
- said identifier identifies digital programming;
- said identifier identifies both mass medium programming and digital programming.
- said identifier identifies a communications resource;
- said identifier identifies said locally generated image;
- said identifier identifies all combinations and sub-combinations of: mass medium programming digital programming communications resource said locally generated image.

Considering claim 62, there is no support for:

- said identifier is received at said interactive video apparatus from one of said remote video source and said remote data source.

Considering claim 63, there is no support for:

- said interactive video apparatus communicates with said remote data source via a digital

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information channel;

- said first data received from said remote video source;
- said second data is received from said remote video source;
- said locally generated image by processing said first data;
- said locally generated image by processing said second data.

Considering claim 64, there is no support for:

- said first data received from said remote video source;
- said second data is received from said remote video source;
- said locally generated image by processing said first data;
- said locally generated image by processing said second data.

Considering claim 65, there is no support for:

- said interactive video apparatus includes a computer;
- said second data received from said remote video source;
- said second data received from said remote video source in a first discrete signal;
- organizing first information contained in said first discrete signal;
- organizing first information contained in said first discrete signal with
second information contained in a second discrete signal;
- organizing first information contained in said first discrete signal with

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second information contained in a second discrete signal in order to enable said interactive video apparatus to process at least one processor instruction comprising said first information and said second information; and

- causing said computer to respond to said at least one processor instruction.

Considering claim 66, there is no support for:

- said step of organizing is performed by an assembler.

Considering claim 67, there is no support for:

- said step of processing comprises
- storing first programming in order to present a portion of said at least one of said locally generated image and said image received from said remote video source at a particular time or place.

Considering claim 68, there is no support for

- said video output device displays said locally generated image based on said step of storing.

Considering claim 69, there is no support for

- said interactive video apparatus includes a computer which stores said first data.

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Considering claim 70, there is no support for:

- wherein said interactive video apparatus includes
- a computer which generates said locally generated image in response to at least one instruction
- said method further comprising the step of
- outputting said first programming to said computer.

Considering claim 71, there is no support for:

- further comprising the step of programming said computer to respond to said at least one instruction.

Considering claim 72, there is no support for

- said step of programming comprises the steps of:
- receiving a programming transmission from said remote programming source; and
- inputting at least a portion of said programming transmission to said computer.

Considering claim 73, there is no support for

- said interactive video apparatus receives
- encrypted video from said remote interactive video source.

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Considering claim 74, there is no support for:

- said interactive video apparatus includes a local device which inputs selected information to said computer, said method further comprising the step of inputting said at least one instruction from said local device to said computer.

Considering claim 75, there is no support for:

- a method of delivering a video presentation at least one receiver station of a plurality of receiver stations each of which includes a receiver, a signal detector, a processor and an output device, and
- each of which is adapted to detect the presence of at least one control signal and programmed to process downloadable processor instructions,
- said video presentation including (a) a first video image and (b) a second video image,
- said first video image received at said at least one receiver station from a first remote transmitter station,
- said second video image (i) containing at least one datum that
- at least one of completes and supplements said first video image and
- (ii) displayed in conjunction with said first video image, said method comprising the steps of:
 - receiving at one of said first transmitter station and
 - a second transmitter station said downloadable processor instructions, wherein

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- said downloadable processor instructions are capable of causing said at least one receiver station to generate locally and output said second video image
- said downloadable processor instructions having at said at least one receiver station
- a target processor to process data;
- receiving said at least one control signal at said transmitter station, wherein said
- at least one control signal is effective at said at least one receiver station to
- control execution of at least one of said downloadable processor instructions and -
- deliver at least said second video image of said video presentation;
- transferring said at least one control signal to said transmitter; and
- transmitting an information transmission comprising said downloadable processor instructions and
- said at least one control signal.

Considering claim 76, there is no support for:

- said method further comprising the steps
- of receiving
- at least a portion of said first video image and said second video image at said transmitter station; and
- transmitting said at least a portion of said first video image and said second video image to said at least one receiver station.

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Considering claim 77, there is no support for:

- wherein one of said downloadable code and identification data in respect of said downloadable code is
- embedded in a non-visible portion of a signal containing at least one of said first video image and said second video image.

Considering claim 78, there is no support for:

- said video presentation is displayed at said at least one receiver station and
- downloadable code programs said processor
- (i) to output at least one of video, audio, and text one of simultaneously and sequentially with said video presentation
- (ii) to process a viewer reaction to said video presentation and
- (iii) to select information that supplements said video presentation.

Considering claim 79, there is no support for:

- said target processor generates at least a portion of said second video image by
- processing said data, said method further comprising the step of
- transmitting said data.

Considering claim 80, there is no support for:

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- a method of delivering a video presentation at least one receiver station of a plurality of receiver stations each of which includes a receiver,
- a signal detector,
- a processor, and
- an output device, and is adapted to
- detect the presence of at least one signal,
- said method comprising the steps of:
 - receiving, at an origination transmitter station, video to be transmitted by a remote intermediate transmitter station;
 - delivering a signal containing said video to an origination transmitter, said signal containing said video also containing an instruct signal which is operative at said at least one receiver station to instruct said at least one receiver station to at least one of
 - generate and output a local portion of a video presentation and cause said locally generated portion of said video presentation to be displayed in conjunction with said video receiving, at said origination transmitter station, at least one control signal that, at the remote intermediate transmitter station, controls the communication of at least one of said video and said instruct signal; and
 - transmitting said at least one control signal from said origination transmitter before a specific time.

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Considering claim 81, there is no support for:

said at least one control signal comprises at least one of

-a code and a datum which, at

-the remote intermediate transmitter station,

-identifies at least one of (i) said video and

-(ii) data that is at least one of described and promoted in said video, said

method further comprising the step of:

-transmitting from said origination transmitter

-a second control signal

which, at said remote intermediate transmitter station, controls the

communication of said at least one of said video and said instruct signal to a

second transmitter at said specific time.

Considering claim 82, there is no support for:

-the step of embedding specific one of said at least one control signal in a non-visible

portion of a signal containing said video before transmitting said video to said remote

intermediate transmitter station.

Considering claim 83, there is no support for

-said specific time is a scheduled time of transmitting said video at said remote

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intermediate transmitter station.

Considering claim 84, there is no support for:

-A method of delivering a video presentation at least one receiver station of a plurality of receiver stations each of which includes a receiver, a signal detector, a processor, and an output device, and is.

adapted (how and where?)

-to detect the presence of at least one signal,

-wherein at least one processor instruction comprises information content of separate ones of a plurality of discrete signals and

-said at least one receiver station is capable

-providing said at least one processor instruction,

said method comprising the steps of:

-receiving video at a transmitter station;

-delivering said video to a transmitter;

-receiving a first discrete signal of said plurality of discrete signals at said transmitter station, wherein

-said first discrete signal is operative to provide said at least one processor instruction at said at least one receiver station by enabling said at least one receiver station to

-organize information contained in said first discrete signal with information

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contained in a second of said plurality of discrete signals, and said at least one processor instruction instructs said at least one receiver station to deliver a locally generated image for display in conjunction with said video transferring said first discrete signal to said transmitter; and transmitting said video and first discrete signal to said at least one receiver station.

Considering claim 85, there is no support for:

- at least one of identification data and said first discrete signal is embedded in a signal containing said video.

Considering claim 86, there is no support for:

- said step of transmitting directs said video to said plurality of receiver stations
- at the same time and each of said plurality of receiver stations one of receives and
- processes to said first discrete signal concurrently.

Considering claim 87, there is no support for: wherein said video is encrypted.

Considering claim 88, there is no support for: further comprising the steps of

- receiving said video at a receiver in the transmitter station,
- communicating said video from said receiver to a memory location, and

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-storing said video at said memory location for a period of time prior to delivering said video to said transmitter.

Considering claim 89, there is no support for:

wherein said video output device includes a viewing screen which
-displays a first image received from said remote programming source and said step of displaying comprises
replacing less than all of said first image with said locally generated image.

Considering claim 90, there is no support for:

-said locally generated image is overlaid on said first image.

Considering claim 91, there is no support for:

-wherein said interactive video apparatus includes an audio receiver and ceases
-displaying said locally generated video image, said method further comprising the steps of:
-receiving, at said audio receiver, audio which describes information displayed in said video presentation; and
-outputting said audio at said interactive video apparatus before ceasing to display said locally generated video image.

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Considering claim 92, there is no support for:

- wherein said at least one control signal is effective at the remote intermediate transmitter station to control at least one of a plurality of selective transfer devices at different times.

Considering claim 93, there is no support for:

- A method of outputting a video presentation at a receiver station, said video presentation comprising
 - a sequence of outputs and
 - including, as a first of said sequence of **outputs**, a video image, said method comprising the steps of:
 - receiving at least one information transmission at said receiver station,
 - said at least one information transmission containing at least a first discrete signal and at least one control signal;
 - detecting said at least a first discrete signal and said at least one control signal in said at least one information transmission;
 - passing said detected at least a first discrete signal and said detected at least one control signal to at least one processor;
 - organizing information contained in said at least a first discrete signal at said receiver station with information contained in a second discrete signal based

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on said at least one control signal;

-passing at least one processor instruction to or within said at least one processor,

-said at least one processor instruction comprising said organized information from said step of organizing; -

-responding to said at least one processor instruction at said receiver station based on said step of passing said at least one processor instruction;

-generating an image to replace only a portion of said video image by processing at least one stored subscriber datum based on said step of responding to said at least one processor instruction; and

-outputting said video presentation to a user, said video presentation containing, firstly, said video image and, secondly, said generated image to replace said only said portion of said video image.

Considering claim 94, there is no support for:

-wherein a receiver specific control signal is generated based on at least one of said at least one first discrete signal and said at least one control signal, said method further including the step of:

-selecting said video image in response to said generated receiver specific control signal.

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Considering claim 95, there is no support for:

- further comprising the step of controlling at least one of a receiver, a switch, a decryptor, an enabling device, a storage device, a computer, and a second output device based on said at least one control signal.

Considering claim 96, there is no support for:

- said generated image to replace at least said portion of said video image contains at least one receiver specific datum, said method further comprising the steps of:
 - receiving said video image from a remote station;
 - generating said at least one receiver specific datum by processing information stored in a computer; and
 - outputting at least one of a simultaneous and a sequential presentation of said received video image and said generated at least one receiver specific datum.

Considering claim 97, there is no support for:

- assembling said at least one processor instruction based on said at least one first discrete signal.

Considering claim 98, there is no support for:

- said at least one first discrete signal includes only partial information of an identifier

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and said at least one processor instruction includes said identifier.

Considering claim 99, there is no support for:

- said at least one first discrete signal designates a specific user input to process, said method further comprising the step of
- generating output by processing said specific user input.

Considering claim 100, there is no support for:

further comprising the steps of:

- receiving said at least one subscriber datum; and
- passing said at least one subscriber datum to a storage device.

Considering claim 101, there is no support for:

comprising the step of

- communicating to a remote station data evidencing
- at least one of (1) an availability,
- (2) a use, and
- (3) usage of at least one of
- (a) said at least one first discrete signal,
- (b) said at least one processor instruction, and

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-(c) said video image.

Considering claim 102, there is no support for:

-wherein a user inputs an order, said method further including the step of communicating said order to a remote station.

Considering claim 103, there is no support for:

-wherein a receiver specific control signal is processed based on at least one of said at least one first discrete signal and
-said at least one control signal, said method further including the step of
-outputting said video image in response to said receiver specific control signal.

Considering claim 104, there is no support for:

-wherein a receiver specific control signal is processed based on at least one of
-said at least one first discrete signal and said at least one control signal, said method further including the step of
-processing user input based on said generated receiver specific control signal.

Considering claim 105, there is no support for:

-wherein a receiver specific control signal is processed based on at least one of

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- said at least one first discrete signal and
- said at least one control signal and said image to replace said at least
- said portion of said video and image is generated based on said receiver specific control signal.

Considering claim 106, there is no support for:

- wherein a receiver specific control signal is processed based on at least one of said at least one first discrete signal and said at least one control signal, said
- method further including the step of outputting one of a simultaneous and a
- sequential presentation of
- said video image and
- at least one of a receiver specific video and a receiver specific graphic image based on said receiver specific control signal.

Considering claim 107, there is no support for:

- wherein said video is received in one of a television and a multichannel information transmission.

Considering claim 108, there is no support for:

- wherein said one of a television and a multichannel information transmission

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comprises

-an analog television signal.

Considering claim 109, there is no support for:

- wherein said receiver station includes a video monitor **which outputs said video** presentation,
- wherein said video presentation comprises
- a series of computer generated video display outputs, and
- wherein by processing data said at least one processor
- delivers said generated image to replace at least said portion of said video image at said video monitor
- in one of said series of computer generated display outputs,
- said method further comprising the step of receiving said data from a remote data source.

Considering claim 110, there is no support for:

- A method of outputting a video presentation at least one of a plurality of receiver stations each of which includes a receiver, a signal detector, a processor, an output device, each of said plurality of receiver stations being adapted to
- detect the presence of at least one control signal and programmed to process at least

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one processor instruction, said method comprising the steps of:

- receiving at least one transmitter station at least a first discrete signal containing information, wherein
- said at least one processor instruction comprises
- information organized from said information contained in
- said first discrete signal and information contained in a second discrete signal,
- said at least one processor instruction is effective at said at least one of said plurality of receiver stations to
- generate and output only a portion of said video presentation,
- said at least one processor instruction has at said at least one of said plurality of receiver stations a target processor to process data;
- transferring said at least said first discrete signal to at least one transmitter;
- receiving said at least one control signal at said at least one transmitter station,
- wherein said at least one control signal is operative at said at least one of said plurality of receiver stations to
- organize said information in said first and second discrete signals into said at least one processor instruction; and
- transferring said at least one control signal to said at least one transmitter, and -
transmitting at least one information transmission containing said at least said first discrete signal and said at least one control signal.

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Considering claim 111, there is no support for:

- wherein one of a combined and a sequential output of a video image and said only said portion of said video presentation is
- delivered at said output device of said at least one of said plurality of receiver stations, said method further comprising the steps of
- receiving said video image at said at least one transmitter station; and
- transmitting said video image to said at least one of said plurality of receiver stations.

Considering claim 112, there is no support for:

- wherein at least one
- (i) of said at least said first signal includes identification data pertaining to said video presentation and
- (ii) said at least said first discrete signal is embedded in a nonvisible portion of a signal containing said video image.

Considering claim 113, there is no support for:

- wherein said video image is displayed at said at least one of said plurality of receiver stations and said at least one processor instruction programs said processor at least one of
- (1) to output at least two of video, audio, and text at least one of

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- simultaneously and (emphasis)
- sequentially with said video image and
- (2) to process a viewer reaction to said video image and
- (3) to select information that supplements said video image.

Considering claim 114, there is no support for:

- wherein at least one of
- (i) an assembler at said at least one of said plurality of receiver stations
- organizes said information in said first and second discrete signals into said at least one processor instruction and
- (ii) said at least one control signal contains at least a portion of said at least one processor instruction.

Considering claim 115, there is no support for:

- wherein a television program comprises
- a series of computer generated images, where said at least one of said plurality of receiver stations includes a television monitor which displays said video presentation in said television monitor to
- display said only said portion of said video presentation in one of
- said series of computer generated images, said method further comprising the step of

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-transmitting said data.

Considering claim 116, there is no support for:

- method of delivering a video presentation at one receiver station of a plurality of receiver stations each of which includes a receiver, a signal detector, a processor, an output device, and with each of said plurality of receiver stations being adapted to
 - detect the presence of at least one signal, wherein said one receiver station
 - displays video received at said one receiver station from a remote transmitter station and is
 - adapted to
 - display a locally generated image
 - in conjunction with said video in response to at least one processor instruction, said method comprising the steps of:
 - receiving a first discrete signal at an origination transmitter station and
 - delivering said first discrete signal to at least one origination transmitter, wherein said at least one processor instruction is comprised of
 - information contained in said first discrete signal and information contained in a second discrete signal, and wherein
 - one of said one receiver station and a remote intermediate transmitter station is
 - adapted to organize said information contained said first discrete signal

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- with said information contained in said second discrete signal;
- receiving at least one control signal which at said remote intermediate transmitter station operates to
- control the communication of one of said first discrete signal and said at least one processor instruction;
- transferring said at least one control signal to said at least one origination transmitter
- before a specific time; and
- transmitting from said at least origination transmitter said first discrete signal and said at least one control signal.

Considering claim 117, there is no support for:

- wherein at least one of
- a combined and
- a sequential output of a video image and said
- only said portion of said video presentation is delivered at said output device of said one receiver station of said plurality of receiver stations,
- said method further comprising the steps of
- receiving said video image at least one transmitter station; and
- transmitting said video image to said one receiver station of said plurality of receiver stations.

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Considering claim 118, there is no support for:

- comprising the step of embedding said at least one control signal in an information transmission
- containing said first discrete signal before transmitting said first discrete signal to said remote intermediate transmitter station.

Considering claim 119, there is no support for:

- wherein said specific time is a scheduled time of transmitting at least one of said first discrete signal and information associated with said first discrete signal from said remote intermediate transmitter station.

Considering claim 120, there is no support for:

- further comprising the step of: transmitting said second discrete signal.

Considering claim 121, there is no support for:

- wherein said remote transmitter station transmits
- encrypted video to said one receiver station of
- said plurality of receiver stations.

Considering claim 122, there is no support for:

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- wherein a television program comprises
- a series of computer generated images, where said at least one of
- said plurality of receiver stations includes a television monitor which displays
- said video presentation in said television monitor
- to display said only said portion of said video presentation in one of
- said series of computer generated images,
- said method further comprising the step of transmitting said data.

Considering claim 123, there is no support for:

- A method of delivering a video presentation
- at least one of a plurality of receiver stations
- each of which includes a receiver, a signal detector, a processor, an output device,
- and with each of said plurality of receiver stations
- being adapted
- to detect the presence of at least one signal,
- wherein said video presentation includes
- a first image which is received said at one of said plurality of receiver stations
- from a first remote transmitter station, and
- wherein one of a code and an identifier is operative at a receiver station of
- said plurality of receiver stations to

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- designate one of a second image and a device, said method comprising the steps of:
- receiving at least one of said first remote transmitter station and a second remote transmitter station at least one instruct signal which is
- effective at a particular receiver station of said plurality of receiver stations to
- generate locally and output said second image of said video presentation for
- delivery in conjunction with said first image;
- transferring said at least one instruct signal to at least one transmitter;
- receiving at least one first discrete signal and a control signal at said at least one of said first remote transmitter station and said second remote transmitter station,
- said at least one first discrete signal including
- only partial information of said one of a code and an identifier and
- said at least one control signal operative to provide said one of a code and an identifier and
- designate at said at least one of said plurality of receiver stations by
- organizing said partial information with information contained in a second discrete signal at said at least one of said plurality of receiver stations, wherein
- said one of a code and an identifier designates said one of said second image and said device at said particular receiver station and is
- operative to cause said instruct signal to be effective at said at least one of said plurality of receiver stations; and

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- transferring said at least one first discrete signal and said control signal to said at least one transmitter,
- said at least one transmitter station transmitting at least one information transmission
- containing said instruct signal,
- said at least one first discrete signal, and said control signal to said plurality of receiver stations.

Considering claim 124, there is no support for:

- wherein at least one of a
- combined and
- a sequential output of a video image and
- said only a portion of said video presentation is
- delivered at said output device of said at least one of said plurality of receiver stations,
- said method further comprising the steps of
- receiving said video image at said at least one transmitter station; and
- transmitting said video image to said at least one of said plurality of receiver stations.

Considering claim 125, there is no support for:

- wherein at least one of said at least one instruct signal and said at least one control

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signal is

-embedded in

-a non-visible portion of at least one of a video signal,

-a multichannel broadcast signal, and a cablecast signal that contains video.

Considering claim 126, there is no support for:

-wherein said at least one origination transmitter transmits said instruct signal,
said first discrete signal, and said control signal in a data transmission.

Considering claim 127, there is no support for:

-wherein a switch at said at least one transmitter station

-communicates at least one first signal

-selectively from a receiver and

-one of a memory and a recorder to said at least one transmitter,

-said method further comprising the step of:

-detecting said at least one first signal which is effective at said transmitter station
to instruct communication.

Considering claim 128, there is no support for:

-wherein a controller controls a switch to communicate to said at least one

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transmitter at least one first signal,

-said method further comprising the step of:

-detecting said at least one first signal which is effective at said transmitter station to instruct transmission.

Considering claim 129, there is no support for:

-further comprising the step of: transmitting to said at least one of said plurality of receiver stations at least one datum that at least one of

-(i) designates one of a time and a channel of transmission of said instruct signal and

-(ii) specifies at least one of a title of and subject matter contained in one of mass medium programming and data associated with said instruct signal.

Considering claim 130, there is no support for:

-wherein said at least one control signal further

-comprises at least one processor instruction targeted to said processor at

-said at least one of said plurality of receiver stations,

-said at least one processor instruction programming a manner in which said processor responds to said instruct signal.

Considering claim 131, there is no support for:

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- wherein said at least one of said plurality of receiver stations is at least one of
 - adapted to detect the presence of said control signal and
 - programmed to respond to said instruct signal
 - on the basis of the location of one of said control signal and said instruct signal in an information transmission,
- said method further comprising the step of
- causing at least a portion of one of said control signal and said instruct signal to be transmitted in said location.

Considering claim 132, there is no support for:

- wherein a switch at said at least one transmitter station
- communicates at least one first signal selectively from said receiver and
- one of a memory and a recorder to said at least one transmitter,
- said method further comprising the step of
- determining a signal source from which to communicate said at least one first signal to said transmitter.

Considering claim 133, there is no support for:

- wherein a switch at said at least one transmitter station

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- communicates at least one first signal
- selectively from said receiver and one of a memory and a recorder to said at least one transmitter, said method further comprising the step of
- controlling said switch to communicate at least one second signal to said transmitter in response to said at least one first signal which is effective at said transmitter station to instruct communication.

Considering claim 134, there is no support for:

- wherein a switch at said at least one transmitter station
- communicates at least one first signal selectively from said receiver and one of a memory and a recorder to said at least one transmitter, said method further comprising the step of
- controlling said switch to communicate said at least one first signal from a signal source.

Considering claim 135, there is no support for:

- wherein a switch at said at least one transmitter station
- communicates at least one first signal selectively from said receiver and one of a memory and a recorder to said at least one transmitter, said method further comprising the step of

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-controlling said switch to communicate to said one of a memory and a recorder at at least one second signal which is effective at said at least one of said plurality of receiver stations to instruct.

Considering claim 136, there is no support for:

- wherein a controller controls a switch to
- communicate to said at least one transmitter at least one first signal, said method further comprising the step of
- inputting to said controller at least one second signal which is effective to
- control said switch.

Considering claim 137, there is no support for:

- wherein a controller controls a switch to communicate to said at least one transmitter at least one first signal, said method further comprising the step of
- controlling said switch to communicate said at least one first signal according to a transmission schedule.

Considering claim 138, there is no support for:

- wherein a controller controls a switch to communicate to said at least one transmitter at least one first signal, said method further comprising the step of

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-controlling said switch to communicate from one of a plurality of signal sources.

Considering claim 139, there is no support for:

-wherein a controller controls a switch to communicate to said at least one transmitter at least one first signal, said method further comprising the step of
-controlling said switch to communicate said at least one first signal to at least one second transmitter.

Considering claim 140, there is no support for:

-further comprising the step of
-transmitting to said at least one of said plurality of receiver stations said at least one control signal to cause said at least one of said plurality of receiver stations to
-tune to one of a broadcast and a cablecast transmission containing said instruct signal.

Considering claim 141, there is no support for:

-wherein a television program comprises
-a series of computer generated images,
-where said at least one of said plurality of receiver stations includes a television monitor which
-displays said video presentation in said television monitor

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- to display said only said portion of said video presentation
- in one of said series of computer generated images, said method further comprising the step of transmitting said data.

Considering claim 142, there is no support for:

- A method of outputting a video presentation at a receiver station,
- said video presentation including a video image, said method comprising the steps of:
 - receiving an information transmission at said receiver station,
 - said information transmission containing at least a first discrete signal and at least one control signal;
 - detecting said at least a first discrete signal and said at least one control signal in said information transmission;
 - passing said detected at least a first discrete signal and said detected at least one control signal to at least one processor;
 - organizing information contained in said at least a first discrete signal at said receiver station with information contained in a second discrete signal based on said at least one control signal;
 - passing at least one processor instruction to or within said at least one processor,
 - said at least one processor instruction comprising said organized information from said step of organizing;

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- responding to said at least one processor instruction at said receiver station based on said step of passing said at least one processor instruction;
- generating only a portion of said video image
- based on said step of responding to said at least one processor instruction; and
- outputting said video presentation to a user, said video presentation containing said generated only said portion of said video image.

Considering claim 143, there is no support for:

- A method of outputting a video presentation at a receiver station including:
 - receiving a transmission from a remote station, said transmission containing a video image and one or more first discrete signals;
 - passing said received video image to an output device for delivery to a user;
 - detecting said one or more first discrete signals;
 - passing said information contained in said one or more first discrete signals to a processor in response to said step of detecting;
 - organizing said information contained in said one or more first discrete signals at said receiver station with information contained in one or more second discrete signals;
 - responding, at said processor, to processor instructions comprising said organized information, based on said step of organizing;
 - generating a signal based on said processor instructions; and

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-outputting at least a portion of said video presentation based on said generated signal.

Considering claim 144, there is no support for:

- wherein said generated signal is a generated control signal,
- said method further having one step of the group consisting of:
 - selecting at least one of said transmission and said video image in response to said generated control signal;
 - outputting said video image in response to said generated control signal;
 - processing user input based on said generated control signal;
 - generating at least a portion of said video presentation based on said generated control signal; and
- outputting a simultaneous or
- sequential presentation of said video image and one or more receiver specific video images based on said generated control signal.

Considering claim 145, there is no support for:

- wherein said generated signal is a control signal, said method further comprising the step of
 - controlling one of a receiver, a switch, a decryptor or enabling device, a storage device, a computer, and a second output device based on said control signal.

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Considering claim 146, there is no support for:

- wherein said generated signal contains one or more receiver specific data, said method further comprising the step of:
- generating said one or more receiver specific data by processing information stored in a computer.

Considering claim 147, there is no support for:

- further comprising assembling said processor instructions based on said one or more first discrete signals.

Considering claim 148, there is no support for:

- further comprising the step of receiving encrypted video from said remote station.

Considering claim 149, there is no support for:

- wherein said one or more first discrete signals further designate a specific user input to process, said method further comprising the step of
- generating output by processing said specific user input.

Considering claim 150, there is no support for:

- wherein said receiving station includes a microcomputer, said method further

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comprising the step of

-controlling said microcomputer in response to said step of detecting.

Considering claim 151, there is no support for:

-further comprising the step of

-communicating to a remote station data evidencing

-the availability,

-use, or

-usage of

said one or more first discrete signals,

said processor instructions, or said one or more video images.

Considering claim 152, there is no support for:

-A method of delivering a video presentation at least one receiver station of a plurality of receiver stations each of which includes a receiver, a signal detector, a processor, and an output device, and is

-adapted to detect the presence of one or more control signals and programmed

-to process downloadable processor instructions that, at said at least one receiver station, are

-effective to generate and output a local image of said video presentation and have a

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target processor to process data,

-said video presentation comprised of said local image of said video presentation and a video image which is received at said at least one receiver station from

a first remote transmitter station, said method comprising the steps of:

-receiving at one of said first remote transmitter station and a second remote transmitter station said downloadable processor instructions;

-transferring said downloadable processor instructions to a transmitter;

-receiving said one or more control signals at said one of a first remote transmitter station and a second remote transmitter station, wherein said one or more control signals are operative at said at least one receiver station

-to direct said video image to said output device,

-designate a processor to execute said downloadable processor instructions, or

-designate a user input to be processed based on said downloadable processor instructions, and wherein said one or more control signals

-enable said at least one receiver station

-to display said local image of said video presentation in

-conjunction with said video image; and

-transferring said one or more control signals to said transmitter; and

-transmitting a transmission comprising said downloadable processor instructions and said one or more control signals.

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Considering claim 153, there is no support for:

- wherein a combined or sequential output of said video or graphic image and said specific portion of a video presentation is
- delivered at the output device of said at least one receiver station, said method further comprising the steps of:
- receiving said video image at said one of said first and second remote transmitter station; and
- transmitting said video image to said at least one receiver station.

Considering claim 154, there is no support for:

- wherein said downloadable processor instructions or
- a portion of identification data in respect of said downloadable processor instructions are embedded in a non-visible portion of a signal containing said video image.

Considering claim 155, there is no support for:

- wherein said video image is displayed at said at least one receiver station and said downloadable processor instructions program said processor to output video, audio,
- or text simultaneously or
- sequentially with said video image or
- to process a viewer reaction to said video image or to select information that

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supplements said video image.

Considering claim 156, there is no support for:

-wherein said one or more control signals incorporate a portion of
said downloadable processor instructions.

Considering claim 157, there is no support for:

-A method of delivering a video presentation at least one receiver station of a plurality
of receiver stations each of which includes a receiver, a signal detector, a processor,
and an output device, and is
-adapted to detect the presence of signals, said method comprising the steps of:
-receiving, at an origination transmitter station, a video image to be transmitted by a
remote intermediate transmitter station;
-delivering a signal to an origination transmitter,
-wherein said signal contains said video image and includes an instruct signal which is
-effective at said at least one receiver station
-to generate and output a local image of said video presentation,
-wherein said local image is outputted at said at least one receiver station, in
-conjunction with said video image; receiving, at said origination transmitter station,
one or more control signals,

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- wherein said one or more control signals operate at said remote intermediate transmitter station
- to control the communication of at least one of said video image, and said instruct signal; and
- transmitting said one or more control signals from said origination transmitter before
- a specific time.

Considering claim 158, there is no support for:

- wherein said one or more control signals comprise a code or datum which
- operates at the remote intermediate transmitter station
- to identify said video image, said method further comprising the step of:
- transmitting from said origination transmitter a second control signal which
- operates at the remote intermediate transmitter station
- to communicate said video image to a second transmitter at said specific time.

Considering claim 159, there is no support for:

- further comprising the step of
- embedding a specific one of said one or more control signals in a non-visible portion of said signal containing said video image before transmitting said video image to said remote intermediate transmitter station.

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Considering claim 160, there is no support for:

- wherein said specific time is a scheduled time of transmitting said video image at said remote intermediate transmitter station.

Considering claim 161, there is no support for:

- wherein said one or more control signals are effective at said remote intermediate transmitter station to control one or more of a plurality of selective transfer devices at different times.

Considering claim 162, there is no support for:

- A method of delivering a video presentation at least one receiver station of a plurality of receiver stations each of which includes a receiver, a signal detector, a processor, and an output device,
- wherein said at least one receiver station is
- programmed to process code and adapted
- to detect at least a first of a plurality of discrete signals, said code comprised of information contained in each of said plurality of discrete signals,
- said method comprising the steps of:
- receiving a video image at a transmitter station;
- delivering said video image to a transmitter; receiving said at least said first of

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said plurality of discrete signals at said transmitter station,

- wherein said at least said first of said plurality of discrete signals

- enables said at least one receiver station to process said code by

- organizing information contained in said at least said first of said plurality of discrete signals with information contained in a second of said plurality of signals

and, thereby,

- to respond to said code, and wherein said code enables said at least one receiver station to generate or

- identify a local image and output said local image in conjunction with said graphic image;

- transferring said at least said first of said plurality of discrete signals to said transmitter;

and

- transmitting said video image and said at least said first of said plurality of discrete signals from said transmitter station to said at least one receiver station.

Considering claim 163, there is no support for:

- wherein said at least said first of said plurality of discrete signals comprise

- a portion of identification data and is embedded in a signal containing said video image.

Considering claim 164, there is no support for:

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- wherein said step of transmitting directs said video image to said plurality of receiver stations at the same time and each of said plurality of receiver stations
- receives or
- responds to said one or more instruct signals
- concurrently.

Considering claim 165, there is no support for:

- wherein said step of transmitting directs at least said video image to said at least one of receiver station of said plurality of receiver stations in a television, radio, or other electronic transmission.

Considering claim 166, there is no support for:

- further comprising the steps of receiving said video image at a receiver in the transmitter station,
- communicating said video image from said receiver to a memory location, and
- storing said video image at said memory location for
- a period of time .
- prior to said delivering said video image to said transmitter.

Considering claim 167, there is no support for:

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- A method of outputting a video graphic presentation at a receiver station including:
 - receiving, from a remote transmitter station, a transmission that contains at least a first discrete signal of downloadable code and
 - a first completed full screen video graphic image,
 - said first completed full-screen video graphic image containing
 - at least one graphic image;
 - passing said received first completed full-screen video graphic image to a video monitor for
 - delivery to a user, said video monitor having a viewing screen;
 - displaying said first completed full-screen video graphic image at said video monitor,
 - said displayed first completed full-screen video graphic image
 - filling the entire surface area of said viewing screen;
 - detecting said at least a first discrete signal of said downloadable code;
 - passing said at least a first discrete signal of said downloadable code
 - to at least one processor;
 - organizing information contained in said at least a first discrete signal at
 - said receiver station with information contained in a second discrete signal based on at
 - least one control signal;
 - responding to at least one processor instruction at said receiver station,
 - said at least one processor instruction comprising said organized information from

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said step of organizing; passing, to said video monitor based on said step of responding to at least one processor instruction,

-only a portion of a second completed full-screen video graphic image; and displaying, at said video monitor,

-said second completed full-screen video graphic image,

-said displayed second completed full-screen video graphic image

-filling the entire surface area of said viewing screen and

-containing said passed only a portion of said second completed full-screen video graphic image and

-only a portion of said first completed full-screen video graphic image,

-wherein said method delivers said video graphic presentation.

Considering claim 168, there is no support for:

-further comprising a step of

-generating said passed only a portion of said second completed full-screen video

-graphic image in accordance with said at least one processor instruction.

Considering claim 169, there is no support for:

-further comprising the steps of receiving audio from said remote transmitter station,

-and outputting said audio at a speaker during said video graphic presentation.

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Considering claim 170, there is no support for:

- wherein said audio describes information displayed in said video graphic presentation.

Considering claim 171, there is no support for:

- A method of delivering a video graphic presentation at least one receiver station
- of a plurality of receiver stations, each of which
- (a) includes a receiver, a signal detector, a processor to execute at least one processor instruction,
- and a video monitor that has a viewing screen,
- (b) is adapted to detect the presence of one or more control signals, and
- (c) is programmed to process said at least one processor instruction,
- wherein said at least one processor instruction instructs said at least one receiver station
- to pass only a portion of a second completed full-screen video graphic image to said at least one of said video monitor and said television monitor,
- wherein said second completed full-screen video graphic image
- fills the entire surface area of said viewing screen when displayed at said video monitor and

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- contains said only a portion of said second completed full-screen video graphic image and only a portion of a first completed full-screen video graphic image,
- wherein said first completed full-screen video graphic image fills the entire surface area of said viewing screen when displayed at said video monitor,
- and wherein said second completed full-screen video graphic image contains at least one graphic image,
- said method comprising the steps of: receiving at a transmitter station at least one discrete signal that contains only partial of said at least one processor instruction and serves as a basis for providing said at least one processor instruction at said at least one receiver station;
- transferring said at least one discrete signal to a transmitter;
- receiving said one or more control signals at said transmitter station,
- wherein said one or more control signals are operative at said at least one receiver station to provide said at least one processor instruction by
- causing said at least one receiver station to
- organize said partial information with information contained in a second discrete signal, said at least one processor instruction
- directing, to said video monitor, said only a portion of said second completed full-screen video graphic image, said viewing screen
- displaying said only a portion of said second completed full-screen video graphic

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image in conjunction with said one a portion of said first completed full-screen video graphic image;

- transferring said one or more control signals to said transmitter; and
- transmitting a transmission comprising said at least one discrete signal and
- said one or more control signals,
- wherein said method delivers said video graphic presentation.

Considering claim 172, there is no support for:

- further comprising a step of transmitting at least a portion of said first completed full-screen video graphic image.

Considering claim 173, there is no support for:

- wherein said first completed full-screen video graphic image also
- contains said at least one graphic image, said method further comprising a step of
- transmitting said at least one graphic image.

Considering claim 174, there is no support for:

- further comprising a step of transmitting audio that states a significance of information
- displayed in said video graphic presentation.

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Considering claim 175, there is no support for:

- A method of delivering a video graphic presentation at least one receiver station of a plurality of receiver stations,
- each receiver station of said plurality of receiver stations being
- adapted to
- detect the presence of signals and including a receiver, a signal detector, a processor, and a video monitor,
- said video monitor having a viewing screen, said method comprising the steps of:
- receiving, at an origination transmitter station, a first completed full screen video graphic image that fills the entire surface area of said viewing screen when displayed at said video monitor,
- said first completed full-screen video graphic image to be transmitted by a remote intermediate transmitter station and
- displayed at said video monitor;
- delivering a signal to an origination transmitter,
- said signal containing said first completed full-screen video graphic image and at least one discrete signal that
- contains only a part of at least one processor instruction that
- instructs said at least one receiver station to generate and output only a portion of a second completed full-screen video graphic image,

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said second completed full screen video graphic image

- filling the entire surface area of said viewing screen when
- displayed at said video monitor and
- containing said only a portion of a second completed full-screen video graphic image
- in conjunction with only a portion of said first completed full-screen video graphic image,
- wherein at least one of said first completed full-screen video graphic image and said second completed full-screen video graphic image contains at least one graphic image;
- receiving, at said origination transmitter station, one or more control signals, said one or more control signals operate at the remote intermediate transmitter station
- to control the communication of at least one of
- (i) said first completed full-screen video graphic image and said at least one discrete signal,
- (ii) said at least one processor instruction, and
- (iii) said second completed full screen video graphic image; and
- transmitting a transmission that contains said at least one discrete signal, said first completed full-screen video graphic image and said one or more control signals from said origination transmitter before a specific time,
- wherein said method delivers said video graphic presentation.

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Considering claim 176, there is no support for:

- further comprising a step of transmitting audio that describes information displayed in said video graphic presentation.

Considering claim 177, there is no support for:

- A method of delivering a video graphic presentation at least one receiver station of a plurality of receiver stations each of which
 - (a) includes a receiver, a signal detector, a processor to execute at least one processor instruction, and a video monitor that has a viewing screen, and
 - (b) is adapted to detect the presence of signals, said method comprising the steps of: -
 - receiving a first completed full-screen video graphic image at a transmitter station, said first completed full-screen video graphic image
 - filling the entire surface area of said viewing screen when displayed at said video monitor;
 - delivering said received first completed full-screen video graphic image to a transmitter;
 - receiving one or more instruct signals at said transmitter station, said one or more instruct signals at said at least one receiver station
 - designating at least one processor instruction that is operative at said at least one receiver station
 - to generate or
 - identify locally and

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- pass only a portion of a second completed full screen video graphic image to said video monitor,
- said second completed full screen video graphic image
- filling the entire surface area of said viewing screen when displayed at said video monitor and
- containing said only a portion of said second complete full-screen video graphic image and only a portion of said first complete full-screen video graphic image,
- wherein at least one of said first completed full-screen video graphic image and said second completed full screen video graphic image contains at least one graphic image;
- transferring said one or more instruct signals to said transmitter; and
- transmitting said first completed full-screen video graphic image and said one or more instruct signals from said transmitter station to said at least one receiver station, wherein said method
- delivers said video graphic presentation.

Considering claim 178, there is no support for:

- further comprising a step of transmitting audio that describes information displayed in said video graphic presentation.

Considering claim 179, there is no support for:

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- A method of outputting a video graphic presentation at a receiver station including:
 - receiving, from a remote transmitter station, a transmission
 - that contains at least a first discrete signal and
 - a series of video images that each contain at least one graphic image;
 - passing said received series of video images to a video monitor for delivery to a user,
 - said video monitor having a viewing screen;
 - displaying, at said video monitor,
 - a first completed full-screen video graphic image
 - based on said series of video images,
 - said displayed first completed full-screen video, graphic image
 - filling the entire, surface area of said viewing screen;
 - detecting said at least a first discrete signal;
 - passing said at least a first discrete signal to at least one processor;
 - organizing information contained in said at least a first discrete signal

at said receiver station with information contained in a second discrete signal based on

at least one control signal;

- responding to at least one processor instruction at said receiver station,
- said at least one processor instruction comprising said organized information

from said step of organizing; passing, to said video monitor based on said step of

responding to at least one processor instruction,

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- only a
- portion of a second completed full-screen video graphic image; and displaying said second completed full-screen video graphic image at said video monitor, said-displayed second completed full-screen video graphic image
- filling the entire surface area of said viewing screen and
- containing said passed only said portion of said second completed full-screen video graphic image and only a portion of said first completed full-screen video graphic image, wherein said method delivers said video graphic presentation.

Considering claim 180, there is no support for:

- further comprising a step of
- generating said passed only a portion of said second completed full-screen video graphic image in accordance with said at least one processor instruction.

Considering claim 181, there is no support for:

- further comprising the steps of receiving audio from said remote transmitter station, and
- outputting said audio at a speaker during said video graphic presentation.

Applicants' remarks of paper no. 22's section IIA allege:

- pending claims 56-92 correspond to claims 56-92 of the instant application;

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- pending claims 93-141 correspond to claims 37-46, 66-71, 83, 47-51, 84, 52-56, 82,85,57-65,72-80,86, and 81 respectively of co-pending application no. 08/468,641; and
- pending claims 143-182 correspond to claims 24-41, 47, 42-46, and 48-63 respectively.

However, there is, factually, no pending claim 182.

Finally for written description and considering the totality of the *alleged pending claim support*, the *alleged pending claim support* is replete with discrepancies:

- within the *alleged pending claim support*; and
- between Appendix B and the remainder of the *alleged pending claim support*..

Suggestion is made for Applicants to reconcile the discrepancies, element by element, in the same spirit of the above described steps 1)-5).

9. Claims 61 and 63 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Whether a specification provides an enabling disclosure for claimed subject matter is a question of law.

Considering claims 61 and 63, they use the term 'digital' and recite 'digital programming' and 'digital information channel', respectively. However, the claims are not found to be enabled in

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view of the discussion given below as to the level of skill of the ordinary artisan at the time the '87 C.I.P. disclosure was made. (As per an earlier agreement, copies of the "prior art" cited in this paragraph have not been provided with this Office action since such copies were previously provided in co-pending application S.N. 08/499,097).

I. Applicants have now presented claims which are directed to the distribution of "digital television signals" as was allegedly described by applicants '87 C.I.P. disclosure. The following is noted:

As originally disclosed in the '87 C.I.P., it is apparent that Applicants used the terminology "digital television signals" to refer to television signals which represented conventional television programming and which comprised digitized audio and video signal components (see "Example #7" which begins of page 288 of instant disclosure). However, in the '87 C.I.P. disclosure as originally filed, Applicants' clearly lacked any specific description as to how:

- a) the "digital television signals" of Applicants' alleged invention(s) were to have been formatted for transmission over a television distribution system using the method(s) that are now recited in the pending claims; and
- b) as to how the transmission circuitry of Applicants' alleged invention(s) was modified and/or configured for the purpose of handling "digital television signals" in the matter that is now recited in the pending claims.

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Apparent justification for the lack of such descriptions seems to be based on:

1) the allegation made by Applicants' original '87 C.I.P. disclosure that "digital television signals", of the type described therein, were well known in the art at the time of Applicants' alleged invention (note lines 30-33 on page 288 of applicants' disclosure); and
2) on the apparent assumption that the "digital television signals" of Applicants' disclosure could be handled/transmitted in a manner that was interchangeable with the handling and transmission of conventional analog television signals.¹ Hence and on the basis of these substantiated facts, Examiner legally concludes that such allegations and assumptions, made at the time of Applicants' alleged invention, are respectively false and erroneous.

The Examiner emphasizes that he does not dispute the fact that broadcasting digitally formatted television signals was in fact well known to those skilled in the art at the time of Applicants' alleged invention. Specifically, the Examiner acknowledges that the transmission of digital television signals was known in the art when, under "rare"

¹For example, the original '87 C.I.P. disclosure described portions of Applicants' alleged invention(s) as having operated to transmit digital television signals over a TV channel during a first period of time and as having transmitted analog television signals over said same channel during a subsequent period of time (see lines 1-5 on page 302 of Applicants' instant disclosure). However, no discussion as to any difference in the handling of the two different television signals by the alleged invention(s) was ever provided, suggested, or recognized by Applicants' original '87 C.I.P. disclosure).

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circumstances, a transmission channel of sufficient bandwidth was available. However, it is noted that the transmission of these conventional digital television signals was not interchangeable with the transmission of analog television signal as assumed by Applicants' original '87 C.I.P. disclosure because of the extremely large bandwidth that was required to transmit conventional digital television signals; i.e. this was true even when the digital television signals had been compressed using state of the art bandwidth compression techniques [1] [2] [3].

Given the above, the Examiner maintains that the description found in Applicants' original '87 C.I.P. disclosure pertaining to the transmission of "digital television signals" using Applicants' alleged invention(s) was insufficient to have enabled the pending claims using the terminology. Specifically and based on these substantiated facts, it is legally concluded that Applicants' original '87 C.I.P. disclosure at least failed to disclose and describe the manner in which the recited "digital television signals" had to have been formatted and processed so as to have enabled them to have been handled in the manner that was originally described in the '87 C.I.P.; e.g. the manner that now seems to be claimed.

In view of the above, Applicants are hereby requested to submit evidence (e.g. a US Patent or a printed publication) which support the allegations and assumptions on which Applicants' original '87 C.I.P. disclosure was clearly based; i.e. references which show the means needed to format and transmit "digital television signals" in a manner required by Applicants' disclosed/claimed invention(s) were in fact well known to those skilled in the art at the time of Applicants' alleged invention.

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II. The Examiner notes that even those sections of Applicants' original '87 C.I.P. disclosure which were directed to the transmission of "digital television signals", e.g. "Example #7" which begins on page 288 therein, provide few clues as to how the recited "digital television signals" were formatted, handled, and transmitted by Applicants' alleged invention(s) in order to have enable them to have been processed in the manner that is now set forth in the pending claims. For example, the description of Applicants' alleged invention(s) failed to explain:

- 1) how the "digital television signals" of Applicants' alleged invention(s) were formatted and/or compressed so as to have enabled them to have been handled, transmitted, and/or processed in the manner that is now recited in the pending claims;
- 2) how the "digital television signals" of Applicants' alleged invention(s) were formatted and/or compressed so that they could be transmitted over the same TV channel that was used to carry conventional analog TV broadcasts as originally disclosed (see lines 1-5 on page 302 of Applicants' disclosure);
- 3) how the subscriber stations of Applicants' alleged invention were modified in order to have handled/processed "digital television signals" in the manner that is now claimed;
- 4) how the "SPAM" messages of subscriber stations were to have been embedded in the "digital television signals", how said "SPAM" messages were to have been carried by said digitally formatted television signals, and how said "SPAM" messages were to have been extracted from digitally formatted televisions signals;
- 5) how the bit-rate of the "SPAM" messages that were carried by said digital

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television signals was related to the bit-rate of the digital television signals into which they were embedded and how this bit rate related to the bit-rate of the "SPAM" signals that were carried in the analog television signals and how the disclosed/claimed system was configured to handle any such differences (e.g. while not addressed by Applicants' original disclosure, it appears that the conventional differences between the bandwidth of digital television signals and analog television signals would translated into respective difference in the bit-rate of the "SPAM" messages that were embedded in respective ones of the two types of television signals).

III. On the basis of the substantiated facts set forth in parts "I" and "II" above, the Examiner legally concludes that the pending claims which are directed to the handling/transmission of "digital television signals" were not enabled by Applicants' '87 C.I.P. disclosure because the allegations and assumptions, on which the disclosed handling and transmission of such digital television signals was based, were respectively false and erroneous. The Examiner legally concludes that these pending claims represent an invitation to experiment when read in the context of the state of the "digital television signal" transmission art which actually existed at the time of Applicants' alleged invention; i.e. the technology required to have handled/transmitted "digital television signals" in the manner that was disclosed, and thus in the manner that is apparently claimed, does not appear to have existed at the time of Applicants' alleged invention.

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[1] The publication "Digital Television Transmission With 34 Mbit/s" by Burkhardt et al. evidences a conventional transmission system in which a Television signal was broadcast in a digital format (see Figure 2). Even though the bandwidth of the digital television signal was compressed prior to transmission, said digital signal still required a 22 MHZ transmission channel (see the second paragraph under the heading "Bit-Rate Reduction" on page 244); i.e. wherein a bandwidth of 22 MHZ is almost 4X that of a standard 6 MHZ TV channel used for analog television signal transmission.

[2] The US Patent No. 3,755,624 to Sekimoto evidences a conventional system in which a television signal was digitally formatted and bandwidth compressed prior to broadcast. The resulting bit-rate of this compressed digital television signal was 32 Mbit/s which required a bandwidth more than 3X that of said standard 6 MHZ Tv channel.

[3] The US Patent No. 4,742,543 to Fredericksen illustrates a system in which a television signal was processed on the transmitter side of a broadcast system in a digital data format (see figure 1). However, prior to broadcast, Fredericksen converted the digital television signal back into an analog signal format (@33). Such D/A conversion was described as having been necessary because the standard analog TV channel that was used to transmit the television signal was not of sufficient bandwidth to carry the signal in it's digital format (note lines 18-23 of column 5). This provides further substantiated facts for why the conventional "digital television signals" could not have been handled in the manner described by Applicants' as their alleged invention(s) without undue experimentation.

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Enablement cont...

10. Claims 56, 58-59, 62-65, 69, 75, 77, 79, 81, 85, 101, 109-110, 112, 115, 122, 126, 129, 141, 146, 151, 152 (and all claims depending therefrom) are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

a) As originally described in the '87 C.I.P., Applicants' written description described a method for formatting various types of digital control and display data segments called: "*SPAM Messages*". Once formatted, the "normal locations" of television and/or radio programming were embedded within the *SPAM Messages* so as to have created a combined signal which was then transmitted through a 'conventional radio channel' or a 'conventional television channel' wherein the "normal location" was described as 'the vertical blanking interval' of a television video signal.

b) As also originally described in the '87 C.I.P., Applicants' disclosure contained broad statements which suggested that said *SPAM messages* could be embedded within the "normal locations" of other types of programming besides radio and television programming. Specifically, the '87 C.I.P. also disclosed that the *SPAM messages* could be embedded within the "normal locations" of "other media" such as broadcast "data" or print (see the last line on instant page 35; lines 17-20 on instant page 71 and lines 7-9 on instant page 72). **However**, these statements are

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disclosure did not describe system(s) and method(s) which formatted, transmitted, received, processed, and/or *displayed "data" program units under control of, and/or along with, associated SPAM messages because data program units* (i.e. as the terminology "**data**" was coined and used within Applicants' written description) were actually transmitted with said SPAM messages. Specifically, the Examiner maintains that said *more precise* teachings of Applicants' own disclosure evidenced that the handling of the radio and television programming *program units* by the disclosed system(s)/method(s) was different from, and was non-analogous² with, the disclosed handling of *data* by the disclosed system(s)/method(s). More Specifically, said *more precise* teachings of Applicants' original disclosure evidence the fact that only TV and radio programming was carried in the form of said described *program units*, while said "**data**" was

²The Examiner notes that if the disclosed SPAM signals were simply embedded within the digital data stream(s) of *other media*, as they were embedded within the television and radio programming, the ability of the disclosed "processors" to detect and synchronize themselves to the *SPAM signals* would be destroyed because the "cadence" used and required by the disclosed processors for synchronization purposes would no longer have existed; e.g. the start of a new *SPAM message* would not always have followed an "end-of-field" (EOF) signal as was required by processors in all of the embodiments of Applicants' disclosure. However, it is noted that such a synchronization problem was clearly avoided when the other media was carried within the SPAM messages as appears to have actually been taught by the *more precise* teachings of Applicants' disclosure (again, see lines 17-20 on page 72).

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carried as information packets located within said SPAM messages themselves (see part “b”) of this paragraph).

d) Given the substantiated facts set forth in “c”) above, the Examiner legally concludes that the recitations of pending claims 56, 58-59, 62-65, 69, 75, 77, 79, 81, 85, 101, 109-110, 112, 115, 122, 126, 129, 141, 146, 151, 152 were not enabled by Applicants’ ‘87 C.I.P. Specifically, the Examiner finds the facts that Applicants’ disclosure at least failed to set forth the means and/or steps needed to make and use system(s)/method(s) in which recited “data” were formatted, transmitted, received, processed, and/or displayed in the manner which was explicitly disclosed/exemplified for television and radio *program units*. Specifically, in Applicants’ written description, the disclosed system(s) and method(s) for formatting, transmitting, received, processing, and/or displaying said television and radio *program units* were incompatible with system(s) and method(s) which would have been needed to format, transmit, receive, process, and/or display *program units* comprised of “data”. More, specially, it is maintained that “data” (as coined and used within Applicants’ written description) could not be processed in the same manner that was described for television and radio programming program units as now appears to be claimed in claims 56, 58-59, 62-65, 69, 75, 77, 79, 81, 85, 101, 109-110, 112, 115, 122, 126, 129, 141, 146, 151, 152.

Clarification is needed.

11. Claims 56-181 are rejected under 35 U.S.C. 112, first paragraph, because the best mode

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contemplated by the inventor has not been disclosed.

The instant case is like In re Ruschig, 379 F.2d 990, 154 USPQ 118 (C.C.P.A. 1967) where the judge's analysis is found to be appropriate to Applicants' claims.

It is an old custom in the woods to mark trails by making blaze marks on trees. It is no help in finding a trail or in finding one's way through the woods where the trails have disappeared-or have not yet been made, which is more like the case here-to be confronted simply by a large number of unmarked trees. Appellants are pointing to trees. We are looking for blaze marks which single out particular trees. We see none...Working backward from a knowledge of chlorpropamide, that is by hindsight, it is all very clear what route one would travel through the forest of the specification to arrive at it. But looking at the problem, as we must, from the standpoint of one with no foreknowledge of the specific compound, it is our considered opinion that the board was correct in saying: "Not having been specifically named or mentioned in any manner, one is left to selection from the myriads of possibilities encompassed by the broad disclosure, with no guide indicating or directing that this particular selection should be made rather than any of the may other which could also be made".

Ruschig, 154 USPQ at 122-123.

Applicants' disclosure addresses a variety of claim limitations with varying degrees of specificity. However, Applicants' disclosure provided insufficient blaze marks to motivate the assembly of those limitations into the pending claims currently being examined. Notwithstanding, the scattering of teachings across multiple applications in the chain of continuity, under the facts of the instant '571 application, constitute either (1) an affirmative concealment of the best mode of carrying out Applicants invention (Randomex, Inc. v. Scopus Corp., 849, F.2d 585, 7 USPQ 1050 (Fed. Cir.. 1988)), or (2) a total failure to be in possession at the time of filing of what is now claimed. Examiner finds (2) to be the instant case as explained above. However, *assuming arguendo* (2) is not the instant case, the following facts are substantiated for (1).

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Considering claims 56-181, *assuming arguendo* that pending claims are supported 'through' the '87 disclosure so as to benefit from the '81 filing date (it has already been noted that Examiner has not been able to find support). Moreover, *assuming arguendo* that Examiner has not mis-understood *the alleged pending claim* support, then the *alleged pending claim support* seems to have been hidden. Hence, Examiner raises the question of whether Applicants originally disclosed their best mode. The above defined *alleged pending claim support* is hereby referenced for evidence of concealment. The instant '571 specification is analogous to the Ruschig 'woods'. Examiner does not find sufficient blaze marks in the woods. The *alleged pending claim support* tables are considered little to nothing more than attempts by Applicants to provide the originally absent blaze marks at a later time.

Examples of missing blaze marks are found with respect to 'data', 'pending claimed processes as a whole', and 'digital'. Specifically considering claims 56, 58-59, 62-65, 69, 75, 77, 79, 81, 85, 101, 109-110, 112, 115, 122, 126, 129, 141, 146, 151, 152 (and all claims depending therefrom), *assuming arguendo* that the term 'data' can somehow show (2), question is also raised here as to whether Applicants disclosed their best mode. The term 'data' was hidden within the woods by a 'circular description'. Clarification is sought with respect to: the 'woods' of the instant disclosure; and the later offered 'blazes' of the *alleged pending claim support*).

Regarding 'pending claimed processes as a whole', Examiner cannot recognize the pending claimed processes within the 'woods' (reference written description discussion spanning pages 14-80 above). There were no originally disclosed blaze marks to point the way. Hence,

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The '81 and '87 C.I.P. disclosures define the terms differently so that it is not clear whether the old definition is present now or whether it was 'left behind' so that the claims can be constructed properly. Clarification is requested.

The examiner notes that the original '87 C.I.P. disclosure of the present application defines the terminology "programming" differently than the '81 disclosure (of Application S.N.06/317,510). Specifically:

a) The Original disclosure of the present application explicitly defined the term "programming" to mean: "everything that is transmitted electronically to entertain, instruct, or inform including television, radio, broadcast print, and computer programming as well as combined medium programming" (see lines 5-8 on page 11 of the present written description); while in contrast

b) The '81 disclosure (of Parent Application 06/317,510) explicitly defined the same terminology to mean: "everything transmitted over television or radio intended for communication of entertainment or to instruct or inform" (see lines 4-7 in the abstract of US patent 94,694,490).

I. With respect to the terms "program" and "programming" as recited in the pending claims:

A) As it relates to the broadcast and transmission art, the term "*program*" is defined by the Second College Edition of the 'American Heritage Dictionary' to mean: "a scheduled radio or television show". This conventional definition

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of the term "program" seems to be consistent with Applicants' use of the terminology throughout the '81 disclosure. However, this conventional definition is clearly inconsistent with the definition given to the term "programming" via the original disclosure of the present application (see the preceding paragraph of this Office action).

B) While Applicants may be his or her own lexicographer, a term in a claim may not be given a meaning repugnant to the usual meaning of that term, In re Hill, 161 F.2d, 367,73. USPQ 482 (C.C.P.A. 1947). The examiner maintains that the use of the terminology "programming" and "program" in pending claims 57, 58, 61, 67, 70, 71, 72, 89, 129, and 130, is repugnant to the normal/usual use of the terminology. Appropriate correction is required.

16. Considering claims 63, 65, 74, 75, 78, 84, 91, 93, 96, 98, 107, 108, 110, 113, 114, 116, 118, 119, 123, 131, 131, 142, 146, 155, 162, 167, 170, 171, 174, 176, 178, and 179, they use the term 'information' (see above). The metes and bounds of the claims are not definite because: the '81 and '87 C.I.P. disclosures define the terms differently so that it is not clear whether the old definition is present now or whether it was 'left behind'. Clarification is requested.

17. Considering claims 56-181, they are replete with recitations of 'terms whose definitions are different/diverse', in each case the metes and bounds of the corresponding claims are found not definite. Moreover, because Applicants have

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failed to demonstrate support for each term, step, and process containing each term and step, what Applicants consider their invention is found not definite.

18. Considering claims 56, 75, 80, 84, 116, 124, 152, 157, 162, 171, 175, recite the term 'conjunction' (see above); however, it is understood to have been first introduced in the '87 C.I.P., as Applicants allege support to the '81 disclosure, what Applicants consider their invention is found not definite. Likewise, the terms 'combine' and 'combined' (also see above) were not introduced until the '87 C.I.P. was disclosed, as such what Applicants consider their invention is found not definite (see pending claims 111, 117, 124, and 153).

19. Claims 56-181 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

-all independent claims (including claims 56, 75, 80, 84, 93, 110, 116, 123, 142, 143, 152, 157, 162, 11, 175, 177, and 179) and those claims depending therefrom, seem to mix and match '81 and '87 disclosed embodiments when respective entire claim trees are considered. Suggestion is made to specifically enumerate which claim trees are considered directed toward an '81 embodiment and which are directed toward an '87 embodiment if Applicants disagree with this observation.

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Claim Rejections - 35 U.S.C. § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

-Whether a claim is novel is a question of fact.

Entitlement to a filing date does not extend to subject matter which is not disclosed, but would be obvious over what is expressly disclosed (see 112 1st above). Pending claims are found to be merely 'partially supported' by the 'processes that were originally disclosed' in the '87 C.I.P. However, in order to be entitled to any effective filing date, pending claims must be 'fully supported' by the 'processes that were originally disclosed' in the '87 C.I.P.

The instantly claimed new matter, found to prohibit entitlement to any effective filing date, is found to fall under two rubrics. Under the first rubric, pending claims seem to recite alleged inventions using 'terms and phrases of obvious new matter' which (regardless of Applicants intentions) are found to 'create an illusion that

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obvious type double patenting does not exist' when compared to monopolies already enjoyed by Applicants (see rejection below under obvious type double patenting as the claims are best understood). Under the second rubric, the pending claims recite 'obvious and otherwise new matter' which seem to read squarely on 'DirectTV' displays even though the pending claims are not afforded an effective filing date which precedes the earlier DirectTV like patents (example; Jeffers et al) filing date.

The 102 rejections below, while also applied to circumstances of the second rubric, are applied to address the first rubric in the following manner. Examiner first identifies the '87 C.I.P. disclosed preferred embodiment which most closely corresponds to the pending claimed process as it is best understood. Second, with Examiner's best understanding of the identified preferred embodiment, consideration is given for what correlation exists (when there is any correlation) when comparing the identified preferred embodiment with the pending claimed process. Third, to the extent that a correlation has been found, Examiner applies the prior art in rejection. Put differently, each pending claimed process is rejected herein under 102 'to the extent that the originally disclosed preferred embodiment actually supports the pending claimed process.

When the prior art thus applied teaches a claimed process fitting the second rubric, the prior art is also applied. It is because the PTO has a policy for providing compact prosecution, has Examiner spent time considering and rejecting pending

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claimed new matter with reference to the alleged effective filing date even though the pending claims are found not entitled to the alleged effective date. Hence, it cannot not be stressed strongly enough, that the most important issue for Applicants is demonstrating support “....in such full, clear, concise, and exact terms....” as is required under the law of 35 U.S.C. 112 1st paragraph, if Applicants wishes to benefit from the alleged effective filing date.

Moreover, for the benefit of clarifying the issues of art rejections and for the purpose of laying to rest any doubts that the Patent and Trademark Office follows different claim interpretation rules than the courts, pending claims have been given their ‘broadest reasonable meaning’ in ‘their ordinary usage’.

20. Claims 56-181 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. patents 4,694,490 and 4,704,725 which contain the cited ‘81 embodiment.

Note, this rejection, under 35 U.S.C. 102, is caused by Applicants choice to cite passages that did not exist in the original ‘87 C.I.P. disclosure pages 1-557.

Considering claims 56-181, it is found that pending claims are not entitled to any filing date as explained above. In any event, Applicants allege that the *cited ‘81 embodiment* supports pending claims (per *alleged pending claim support* hereby incorporated by reference into this rejection). However, the *cited ‘81 embodiment*, in the present circumstance, is found inadequate for demonstrating full support for the

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pending claims.

Applicants have acknowledged, in interview, that they did not specifically or expressly incorporate by reference into the '87 C.I.P. disclosure, the same passages, paragraphs, and sentences of the *alleged pending claim support* even though he has alleged that they provide full support for the pending claims.

Given such circumstances, it is preliminarily found that the *alleged pending claim support* is a kind of 'prior art road map'. The pending claims are rejected on the basis that the *cited '81 embodiment* was not disclosed in the '87 C.I.P. disclosure; and on the basis that the corresponding passages, sentences, and paragraphs were patented more than 11 years prior to later introducing the pending claim 56-181, alleged by Applicants to be *pending claim support*, into the instant file wrapper (the *alleged pending claim support* corresponding to the *cited '81 embodiment*, was patented on both Sept. 15, 1987, and Nov. 3, 1987, in U.S. patents 4,694,490 and 4,704,725).

21. Claims 56-181 are rejected under 35 U.S.C. 102(a, b, and e) as being clearly anticipated by any of Campbell et al (102a for PCT & e/b for Aban. Parent Appl. No. 135,987). For convenience, reference will be made to corresponding Campbell et al (U.S. patent no. 4,536,791)('791).

Regarding Campbell et al: the PCT publication date, noted on the front page of Campbell et al is October 15, 1981. For this reason, Campbell et al is considered a

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102a reference. However, the effective priority of the material sourced for purposes of this rejection dates to the filing of the corresponding abandoned C.I.P. grant parent application no. 135,987, filed March 31, 1980. What was added in the C.I.P. of issue, is disclosure corresponding to Figures 2a, b, and 14-17 of the '791 patent. Because, the rejection herein relies on Fig's 1, 2, and 3-13, and corresponding written description and not Fig.'s 2a, b, and 14-17, the effective filing date of the teaching subject matter relied upon for this rejection in the '791 patent is March 31, 1980. A copy of the abandoned grand parent was provided in application 08/468,641 corresponding to pending claims 93-141.

Considering claims 56-181, they are considered herein in reference 'to the extent that true support is found' in the '87 C.I.P. disclosure, even though Applicants allege differently (*see alleged pending claim support*).

Considering claims 56-181, Campbell et al teach: communicating information at a multimedia receiver station (addressable converter, item 40 Figure 1); the receiver station (addressable converter) containing one or more receivers (item 40, per Campbell et al teaching, in Figure 6 wherein item 100 receives multimedia signaling); a computer connected to the receiver for processing and communication information (Campbell et al Figure 7 shows dissection of Figure 6 item 104 in which computer 410 of Figure 7 receives video and graphics from Figure 6 item 100); a plurality of output devices (Figure 7 shows the process of channeling information to graphics output

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circuitry and also to video output circuitry); inputting a subscribers command (Figure 12 item 334 inputs key word) is taught by Campbell et al when subscribers desire to watch special events, higher tiers, or any unauthorized programming; controlling the receiver station to receive a signal (Fig 11 item 200) in response to the key word entry (subscriber command) the signal (Fig 11 item 200) comprising a signal (same or different??- either Fig 11 item 200 or Fig 11 item 206 depending on whether 'a signal' is meant to be same or different than previous recitation) which permits operation of the receiver station in a designated media operation (Campbell et al teach that the threshold code be entered by the user, col 14 line 18, which effects signal 200 to comprise a corresponding 206 permitting operation or the receiver station to allow previously ineligible programming); detecting the presence of two or more instruct-to-coordinate signals (a first signal is taught by Campbell et al is channel control word signal 200 of Figure 11, the second signal is the event enable word signal 220) at the receiver station; each instruct-to-coordinate signal designating: channel control word designates (1)-a portion of multimedia programming signal to receive by designating tier code (Figure 11, item 200 with item 202) and event enable word signal 200 designates (2)- a portion of a multimedia programming signal to communicate to a memory location wherein items 222, 224, 226, 228 are stored in item 104 (see col 13 line 61 thru col 14 line 8); communicating one or more units of multimedia programming in response to the two-or more instruct-to-coordinate signals (Campbell

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et al teach that after special event codes are stored in item 104 in response to entry of keyword an activation of channel number 226, that the special program be output to the requesting subscriber). Campbell et al does specifically teach that television programming displays that promotes a multi-media product or service. Campbell et al teach promoting special events available on non-authorized channels so that subscribers would become aware of any event of interest and then order that event, i.e. advertise. Campbell et al further teach (see Fig 11 item 216) the receiving station being programmed to allow viewing of some channels but not others (other control words such as address are considered associated identification datum).

Moreover, Campbell et al teach processing received programming based on a predetermined fashion by comparing a requested channel to an authorized channel and then making a decision whether to switch to graphics display and key word entry prompt or to allow viewing of the selected program and channeling video signal to video descrambler (see associated Fig 12 item 334 and Figure 7 item 101). Campbell et al teach processing subscriber command (entered key word-see Fig 12 item 334) based on said one or more instruct-to-coordinate signals (the one instruct-to-coordinate signal associated with entered key word signal 200 having the effect on signal 206- see Figure 11). Campbell et al teach processing viewer's reaction (to a prompt for key word entry) based on one of said one or more instruct-to-coordinate signals (the 206 instruct to deny eligibility to some requested programs) and outputting some

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programming to a second output device (the video/audio output associated with the descrambling path 101 of Figure 7) based on inputting and processing (of either the key word, or a change in eligibility threshold). Campbell et al teach processing the subscriber command (key word item 334 Figure 12), and communicating information based on the step of entering the key word to the remote station based on inputting and processing (the hub end remote station monitors those viewed channels via two-way-interactive cabling (col 3 line 24). Campbell et al teach two-way-cable communication specifically from subscriber to remote data collection stations which include: inputting viewers reaction at a subscriber station (prompt for key word entry item 334 Figure 12); receiving at a subscriber station information that designates an instruct signal to process/output to deliver in consequence of specific subscriber input (specific subscriber inputs of eligibility threshold setting or keyword entry allows deliverance of a previously in-eligible program to be outputted to the subscriber; determining the presence of specific subscriber input at the subscriber station by processing and viewers or participants reaction (matching entered key word to predetermined key word by processing entered keyword); processing an instruct signal (word 230 Figure 11) effective to coordinate multimedia programming presentation based on the subscriber input (key word or newly entered eligibility threshold) at the subscriber station in consequence to the step of determining; transferring from the subscriber station to one or more remote data collection stations an indicia confirming

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delivery of the instruct signal (word 230 Figure 11) from the step of processing or conforming delivery of the same from the step of processing (the system monitors viewed programs, col 3 line 24 for purposes which include billing, statistic gathering, etc...). Campbell et al teach storing subscriber instruction to receive one or specific mass medium programs, data, news items, or computer control instructions (the hub end stores tier code item 202 Figure 11, eligibility threshold code item 238 Figure 11, etc... based on subscriber authorization); and receiving one or more specific mass medium programs, data, news items, or computer contorts instruction in accordance with the instructions (col 16 lines 47-59 show teachings wherein programs available based on tier code item 202 Figure 11, eligibility threshold code item 238 Figure 11, etc...). Campbell et al teach instruction signal (eligibility threshold codes) input by the subscriber (col 14 line 18) storing subscriber instruction (event enable word is stored in item 104 see col 13 lines 61 thru col 14 line 8) to process or present one or more mass medium programs; processing or presenting one or more specific mass medium programs with the instruction (when the special event is broadcast then the special event is made available via video descrambling circuitry -Figure 7 item 101).

Campbell et al teach that the information with designates a specific subscriber input or said instruct signal (eligibility threshold code) is detected in an information transmission from a data or programming source. The processor taught by Campbell et al is inherently programmed to respond to data from the programming source hub

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end transmitter. The programs are received. The detector 100 of Figure 6 does detect programming and control signaling wherein both data and control signaling and instruct signaling are passed to item 104 of Figure 6. Campbell et al teach controlling the remote intermediate data transmitter station to communicate data to one or more receiver stations, with the remote transmitter station including a broadcast or cablecast transmitter for transmitting one or more signals which are effective at a receiver station to instruct a computer or processor (Campbell et al abstract and Figure 7 processor 410; particularly not that the user of the receiving station enters an eligibility threshold code col 14 line 18 which is effective to allow viewing of pre-authorized programming and hence instruct processor 104 of Figure 6 to control the programming reception); a plurality of selective transmission devices (video device circuitry Figure 7 item 101 or graphics device circuitry Figure 7 item 124); a data receiver (Figure 6); control signal detector (item 104 or internal circuitry of item 104 depicted in Figure 7); controller or computer (item 410 of Figure 7) for detecting the control signaling (depicted in Figure 11) for controlling program output based on the eligibility code 206; receiving instruct signaling item 238 must be received by the transmitter station in order to be transmitted back to the receiver station as illustrated by Figure 11 (see discussion of eligibility code threshold authorization in col 14 line 18); for control signals are inherently used to communicate the eligibility threshold code. Campbell et al do teach 'a specific time'. A specific time is merely considered

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the time the control signals are transmitted. Campbell et al teach embedding specific one of said one or more control signals within the information transmission between the transmitter station and the receiver station.

Campbell et al teach: communication between a transmitter station and a receiver station (abstract); including delivery of media to the receiver station from the transmitter station via a transmitter (it is inherent to the process of receiving programs at the receiver station for the programs to be delivered to a transmitter for transmitting to that receiver station); the transmitter station receives signaling of a eligibility threshold code from the receiver station (col 14 line 18; note Figure 11 shows signaling in the direction of the transmitter station to receiver station including item 238 necessitating that the eligibility threshold was first communicated in the direction of the receiver station to the transmitter station after authorization of a certain eligibility threshold code is given prior to subsequent Figure 11 depiction of the threshold being transmitted back to the receiver station as item 238); the eligibility threshold code or the eligibility code item 206 or item 200 channel control word (considered instruct signaling) operates at the receiver station to coordinate which programs will be viewed upon request based on tier etc....; Campbell et al, per discussion above, do communicate at least one signal of eligibility threshold code in order for it to be transmitted back as item 238 personal schedule; moreover, they teach embedding one or more control signals in the unit of programming before transmitting

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the unit to the remote transmitter stations is inherent to Campbell et al teachings.

Campbell et al teach that the unit of programming comprises audio or text, or video.

The unit of programming is taught to be a television program by Campbell et al.

Campbell et al teach the claimed subject matter including the display of stock market quotations, news stores, stock quotations etc... (col 16 lines 48-56).

Further in consideration of priority, it is noted that the term 'combined' is found to have been first introduced when the '87 C.I.P. disclosure was filed. Also, claims 56, 75, 80, 84, 116, 124, 152, 157, 162, 171, 175, are found to recite the term 'conjunction'. However, the term 'conjunction' is found to have been first introduced when the '87 C.I.P. disclosure was filed.

22. Claims 56-181 are rejected under 35 U.S.C. 102(e) as being anticipated by Jeffers et al (U.S. patent no. 4,739,510).

Considering claims 56-181, Jeffers et al teach: processing signals (performing something that incites action conducted to an end on that which conveys notice) in a network including: receiving signaling (that which conducts notice) at a transmitter station (the place or position where transmission occurs which includes, as example, the uplink equipment 20 of Fig 1); generating at least a portion (at least a part of the whole and including the whole) of a processor code module (a standardized unit comprising a system of symbols for communication that incite action conducted to an end; the unit which comprises the header and addressable portions and all of their

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inherent contents are generated - Fig 3; col 7 lines 9-12) which is effective at a receiver station (the place or position where reception occurs; #38 Fig 1) to control a plurality (more than one) of computer peripheral devices (mechanisms designed to serve a special purpose of auxiliary function for a programmable electronic device; any two or more combinations of the circuitry or parts of the circuitry depicted in Fig's 2a,b including the micro-controller but excluding the microprocessor; col 14 line 49); outputting info to user (the entertainment); establish telephone communications between the receive station and a remote station (the auto dial; col 23 line 17) for the communication of the data to a remote station (billing center computer 14; col 15 line 48); transmitting control signaling ("the addressable portions contain information relating to the control of individual addressed receiving units" col 7 lines 12-14).

Jeffers et al teach receiving the processor control module (the header and addressable portions are received by the location or area of Fig 1 #38); processing at least a portion of a processor code module to cause the receiver station to control a plurality of computer peripheral devices (any two or more combinations of the circuitry or parts of the circuitry depicted in Fig's 2a,b perform "capturing and storing the control information in the addressed portion"- col 7 line 26; note: more than two memory locations are inherently required to store the amount of control information in the addressable portion; thus the more than two memory locations, inherently necessary to store the control information, are considered a 'controlled plurality of computer

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peripheral devices' because each memory location is by definition a 'mechanism designed to serve a special purpose of auxiliary function for a programmable electric device'); output information to a user (the entertainment; claim 3); establish telephone communications with a remote station and communicate data to the remote station (the billing center is auto dialed; col 15 line 38, col 23 line 17). Further, Jeffers et al teach receiving at an origination station (place or position where something begins such as the combination or sub-combination of at least two elements of Fig 1 but excluding the receiver side) at least one of signals (the signal, col 7 line 8; the signals include all or portions of information including the combined unit of the header and addressable portions or combination of portions thereof, and the inherence of the repetitive transmission of like signaling and there combinations or portions of their combinations) to be transmitted (from location of #20 Fig 1); receiving at the origination station (for example, some of the combination or sub-combination of at least two elements of Fig 1, but excluding the receiver side, are the origin of many signals including the scrambling signals; col 9 line 17) an instruct signal (a first set or subset of segments or a single segment of the 'addressable portions' which constitute "information relating to the control", col 7 lines 13-14) which is effective to accomplish (see sub step 2b) effecting a receiver station (location of #38 Fig 1) to generate at least a portion of a processor code module (note: 'generation' is considered to be the act of producing'; processor control module, defined above, is

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produced at the receiver station) which is effective at the receiver station to control a plurality of computer peripheral devices; output information to a; establish telephone communications between the receiving station and a remote station for communication data to the remote station; receiving at the origination station a transmitter control signal (the portion of the synchronization signaling inherently required to influence sync at the transmitter that are also conveyed to the receiver for the telling the receiver how to synchronize; the portions used at the transmitter and added to the 'sync information' col 7 line 10; note: synchronization information instructs coordination between the transmitter and the receiver, and therefore inherently operates at both the transmitter and the receiver in the case where it is embedded into the signaling such as taught by Jeffers et al; the portions of sync used at the transmitter and conveyed to the receiver are considered one example of how Jeffers et al teach the recited 'transmitter control signal' used to convey all other signaling and included in the conveyed signaling) which operate at the transmitter station (for controlling synchronization) to communicate one of the instruct signals (synchronized to the 'portion of synchronization signaling') and processor code module to the transmitter and transmitting from the origination station the signal, the instruct signal and the transmitter control signal.

Moreover, Jeffers et al teach a network (col 1 line 8) including transmitting a signal to at least one of a plurality of stations (the one station is considered to be any

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one of the chain of receiving stations from station of block 24, the inference that there can be multiple block 24's, the station satellite B, or any one of the in excess of 16 millions intended receiver stations -col 8 lines 27-28- that have the television sets depicted by Fig 1 combinations items 38, 36, 34, 30, 33, 32, and all other control devices throughout the system which operate to receive signaling); controlling a first transmitter station based on the signal (the system operator controls signaling of both programming, audio, video, control, etc) which causes a first transmitter station (Fig 1 #20) to transmit the signal (let the signal be the stream of control messages of type 1 in Fig 6a, type 2 Fig 6b, types 3-5 in Fig's 6c-e) wherein there is selection of processor code and telephone number (the code is subscriber address of Fig 5; the telephone number is Fig 6); generating these (inherently followed by the selection); transmitting these (sent out through #20 of Fig 1); controlling a first receiver station (any one of the millions of intended receiving stations,) based on the signal (Webster's dictionary teaches that the word control can reasonably mean 'directing influence over'; the control information of Fig 5 thru Fig 6g indeed do have influence over the receiver- note particularly Fig 6F); wherein the control includes the selection of a first portion of a first message contained in the signal such that selected first portion is communicated to an output device (television) for display to the subscriber; controller a second receiver station based on the signal (any one of the other millions of intended receiver stations are controlled similarly to the first discussed above, see col 8 line 28); wherein

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there is input to a processor the data associated to the establishment of communications to the remote station wherein at least one of the first and second receiver stations output the billing information in accordance with the code (col 23 lines 13-18).

Jeffers et al teach that the output devices are selected (see Fig 6g) wherein output is inherent to the namesake of the output devices which are themselves inherently selected all with 'generally applicable information'. Likewise, Jeffers et al teach that at every receiver station of the intended millions including the second station, the selection of a portion of a data module in response to a user subscriber input (when the subscriber wants to watch a channel, the information associated to that channel such as the video, audio, graphics, text are selected by the user); inputting a subscriber input under control of the processor code -see recording of pass code col 11 lines 11-12 (some other processor code taught by Jeffers et al is includes the stored decryption key info Fig 7 bottom right hand corner; also see the stored subscriber pass code information -col 14 line 24; or anything not related to the normal subscription service paid for -col 10 lin 57; further the tier authorization is also part of the keying system) wherein the stored processor code regulates the input because if a tier is not approved or a key has been compromised then the subscriber would be regulated in what programming can be watched (see col 3 line 41 thru col 4 line 8).

As follows, Jeffers et al teach selecting the output device and controlling a

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microcomputer to determine whether a subscriber input exists (it is inherent that the circuitry of Fig's 2a,b that include both microcomputer and micro-controller as taught by Jeffers et al is used to determine whether subscriber input exists including the parental control key-see col 14 line 24).

Notwithstanding Jeffers et al teach specific subscriber input (parental key, col 14 line 24; also see all the other things discussed above that meet this limitation; and see the disclosure of Jeffers et al for many more); selecting the output device that inputs to the microcomputer (although the television met the limitations of claim 2, an alternative at this point to the 'output device' which works with and meets the 'output device' functions of this claim can be the memories 68, 70, 72, key memory or any combination of these memories wherein there is store of encryption keying-see Fig 7, data stream information etc....broadly languaged recitations are taught by Jeffers et al associated to memory locations; see the disclosure for more things on which this broad recitation reads; Applicants are cautioned here that the although the terms microcomputer and micro controller per broad and reasonable definition can be used interchangeably whether or not Jeffers et al assign specific tasks to chips given both names respectively; note for example the combination of the Jeffers et al teach that two chips 'micro-computer' and 'micro-control' act together to be a single microcomputer; also combinations and sub-combinations of the chips of Fig's 2a,b can also meet the limitation 'micro-computer'); selecting the output device that inputs to

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the microcomputer as well as selecting an input to the microcomputer on the basis of a comparison and inputting to the microcomputer comparison information communicated with the at least a portion of the signal (these limitation are met by the inherent operation of the combined 'authorization list', 'non-authorization list', pass. code entry and comparison, comparison to selection of tiers required by key pad but not authorized or blocked, etc.).

And furthermore. Jeffers et al teach the combination that a data module is transmitted (see the header, the addressable portions, Fig's 5-6g for combinations and sub-combinations or sizes small and large which meet this considerably broad relations); receiving the transmitted signal (explained above); selecting information (see above); generating at least a portion of a control module that contains processor code and selected information (see above and the multiple combination and sub-combination of signaling that meet these relations); transmitting the control module (see above); controlling further comprising the step of communicating the control module to a process (see above); third step including controlling the output device based on information.

Further in consideration of priority, it is noted that the term 'combined' is found to have been first introduced when the '87 C.I.P. disclosure was filed. Also, claims 56, 75, 80, 84, 116, 124, 152, 157, 162, 171, 175, are found to recite the term 'conjunction'. However, the term 'conjunction' is found to have been first introduced

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when the '87 C.I.P. disclosure was filed.

Claim Rejections - 35 U.S.C. § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

-Whether pending claims are obvious under 35 U.S.C. 103 are conclusion of law.

-Entitlement to a filing date does not extend to subject matter which is not disclosed, but would be obvious over what is expressly disclosed (see 112 1st above).

In making the rejections below, the claims have been considered to the extent that true support has not been found within the instant disclosure. Moreover and for the purpose of laying to rest any doubts that the Patent and Trademark Office follows

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different claim interpretation rules than the court, it is understood that the PTO must give pending claims their 'broadest reasonable meaning' in 'their ordinary usage'.

23. Claims 56-181 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell et al or Jeffers et al in view of U.S. patents 4,694,490 ('490) and 4,704,725 ('725),

Considering claims 56-181, it is noted that Applicants have demonstrated support "only" to the "81 case" (see Applicants quotes above). It appears Applicants may believe they are entitled to the 'entire '81 disclosure. However, it clearly was not included in the '87 disclosure nor was it incorporated by reference into the '87 disclosure. It appears that subject matter was omitted from the '87 disclosure even though it was included in the '81 disclosure. In view of the above, it is important to consider claims *as a whole* for identifying whether they happen to mix and match '81 and '87 embodiments, or whether they use '87 disclosed terms/modifiers for being afforded the '87 effective filing date only. For example, if a single claim contains: terminology of an '87 embodiment that modifies an '81 term then such a single claim, when considered *as a whole (the whole defines the invention)*, will be afforded:

- an '87 filing date only (if the '81 and '87 described processes are clearly, concisely, and with exact terms, understood to be compatible);

- no effective filing date (if the '81 and '87 described processes are not (by 112

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1st paragraph), clearly, concisely, and in exact terms, considered compatible);
-a ~~6/6/95~~⁵ effective filing date only (if the claims can only be fully supported when the subject matter that Applicants “incorporated by reference” is considered. (See discussion above describing how Applicants, regardless of their intention, “incorporated by reference the ‘329 parent “in it[’]s entirety” into the instant disclosure.

In any event and specifically for claims which are only afforded the ~~6/6/95~~⁵ filing date, what Campbell et al teach and what Jeffers et al teach is described in the rejections above for claims 56-181. To the extent that Campbell et al and Jeffers et al do not teach the claimed invention of claims afforded the 6/5/99 filing dates, the difference is found suggested by both the ‘490 and ‘725 patents. Provision for the difference would have been obvious for providing greater functionality to the subscriber station.

24. Claims 56-181 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 89/02682.

Considering claims 56-181, to the extent that Applicants can satisfy the enablement requirement of 112 1st but not the support requirement, a comparison has been made between a) the *alleged pending claim support* (Examiner incorporates by reference the *alleged pending claim support*) and b) embodiments taught in

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Applicants' publication of March 23, 1989, by way of WO 89/02682. It is found, even if pending claims can be arrived at with experimentation, then it would most likely be from 'mixing and matching' the WO 89/02682 embodiments. And the ordinary artisan, to the extent that mixing and matching could have been done with undue experimentation, would have done so for the benefit of providing greater functionality to the subscriber.

25. Claims 56-181 are rejected under 35 U.S.C. 103(a) as being unpatentable over all of: Campbell et al alone; Jeffers et al; Jeffers et al in view of Examiner's Official notice that the various claimed displays of 'locally generated graphics with remotely generated video were conventionally well known with respect to Direct TV like art (as evidenced by PMC allegation that Direct TV constitutes such displays, see United States Court of Appeals for the Federal Circuit Appeal No. 98-1160 decided on Nov. 24, 1998); Campbell et al in view of Zaboklicki (DE 2,904,891); and Jeffers et al in view of Zaboklicki (DE 2,904,891).

In making the rejections below, pending claims have been considered heavily with respect to the second rubric. The pending claims are, however, given their 'broadest reasonable meaning' in 'their ordinary usage'.

Considering claims 56-181, the rejections above are incorporated by reference. Although the pending claims are not found 'fully' when considering the *alleged*

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pending claim support, they are nevertheless 'fully' considered. Campbell et al teach generation of text from a local text graphics generator for overlaying on the Campbell et al display. Hence, the mere characterization, of the Campbell et al taught text and video, with terminology such as 'portions' which are either 'sequentially', 'concurrently', or 'simultaneously' displayed would have been obvious as suitable descriptors. The same is found true for what Jeffers et al teach. Moreover, Examiner takes official notice that Direct TV receivers performed the pending claimed displays before the effective filing date that the pending claims are afforded. Notwithstanding, Zaboklicki teaches the various displays. In any event, PMC has constructively admitted that they believe DSS broadcasts perform '*video overlays*' (see Appeal No. 98-1160 page 25 with respect to the '277 claim 44) "PMC contends that the DSS broadcasts ...is displaying the *video overlay*" when it comes to Direct TV. Hence, in view of Examiner's official notice (and the finding that the pending claims are not afforded an effective filing date) and to the extent that it is not inherent, it would have been obvious to provide the various claimed displays in the organized and specifically recited manner for the benefit of providing greater functionality to the subscriber. Finally what Zaboklicki teaches was described in the first office action of the instant disclosure. Said early rejection is hereby incorporated by reference into this rejection. It would have been obvious to modify both Campbell et al and Jeffers et al, respectively, with Zaboklicki for the benefit of greater display functionality at the user

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station.

Double Patenting

26. Conflicts exist between claims of the following related co-pending applications which includes the present application:

#	Ser. No.	#	Ser. No.	#	Ser. No.
1	397371	2	397582	3	397636
4	435757	5	435758	6	437044
7	437045	8	437629	9	437635
10	437791	11	437819	12	437864
13	437887	14	437937	15	438011
16	438206	17	438216	18	438659
19	439668	20	439670	21	440657
22	440837	23	441027	24	441033
25	441575	26	441577	27	441701
28	441749	29	441821	30	441880
31	441942	32	441996	33	442165
34	442327	35	442335	36	442369
37	442383	38	442505	39	442507
40	444643	41	444756	42	444757
43	444758	44	444781	45	444786

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46	444787	47	444788	48	444887
49	445045	50	445054	51	445290
52	445294	53	445296	54	445328
55	446123	56	446124	57	446429
58	446430	59	446431	60	446432
61	446494	62	446553	63	446579
64	447380	65	447414	66	447415
67	447416	68	447446	69	447447
70	447448	71	447449	72	447496
73	447502	74	447529	75	447611
76	447621	77	447679	78	447711
79	447712	80	447724	81	447726
82	447826	83	447908	84	447938
85	447974	86	447977	87	448099
88	448116	89	448141	90	448143
91	448175	92	448251	93	448309
94	448326	95	448643	96	448644
97	448662	98	448667	99	448794
100	448810	101	448833	102	448915
103	448916	104	448917	105	448976

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106	448977	107	448978	108	448979
109	449097	110	449110	111	449248
112	449263	113	449281	114	449291
115	449302	116	449351	117	449369
118	449411	119	449413	120	449523
121	449530	122	449531	123	449532
124	449652	125	449697	126	449702
127	449717	128	449718	129	449798
130	449800	131	449829	132	449867
133	449901	134	450680	135	451203
136	451377	137	451496	138	451746
139	452395	140	458566	141	458699
142	458760	143	459216	144	459217
145	459218	146	459506	147	459507
148	459521	149	459522	150	459788
151	460043	152	460081	153	460085
154	460120	155	460187	156	460240
157	460256	158	460274	159	460387
160	460394	161	460401	162	460556
163	460557	164	460591	165	460592

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166	460634	167	460642	168	460668
169	460677	170	460711	171	460713
172	460743	173	460765	174	460766
175	460770	176	460793	177	460817
178	466887	179	466888	180	466890
181	466894	182	467045	183	467904
184	468044	185	468323	186	468324
187	468641	188	468736	189	468994
190	469056	191	469059	192	469078
193	469103	194	469106	195	469107
196	469108	197	469109	198	469355
199	469496	200	469517	201	469612
202	469623	203	469624	204	469626
205	470051	206	470052	207	470053
208	470054	209	470236	210	470447
211	470448	212	470476	213	470570
214	470571	215	471024	216	471191
217	471238	218	471239	219	471240
220	472066	221	472399	222	472462
223	472980	224	473213	225	473224

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226	473484	227	473927	228	473996
229	473997	230	473998	231	473999
232	474119	233	474139	234	474145
235	474146	236	474147	237	474496
238	474674	239	474963	240	474964
241	475341	242	475342	243	477547
244	477564	245	477570	246	477660
247	477711	248	477712	249	477805
250	477955	251	478044	252	478107
253	478544	254	478633	255	478767
256	478794	257	478858	258	478864
259	478908	260	479042	261	479215
262	479216	263	479217	264	479374
265	479375	266	479414	267	479523
268	479524	269	479667	270	480059
271	480060	272	480383	273	480392
274	480740	275	481074	276	482573
277	482574	278	482857	279	483054
280	483169	281	483174	282	483269
283	483980	284	484275	285	484276

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286	484858	287	484865	288	485282
289	485283	290	485507	291	485775
292	486258	293	486259	294	486265
295	486266	296	486297	297	487155
298	487397	299	487408	300	487410
301	487411	302	487428	303	487506
304	487516	305	487526	306	487536
307	487546	308	487556	309	487565
310	487649	311	487851	312	487895
313	487980	314	487981	315	487982
316	487984	317	488032	318	488058
319	488378	320	488383	321	488436
322	488438	323	488439	324	488619
325	488620	326	498002	327	511491
328	485773	329	113329		

27. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. The attached Appendix provides clear evidence that such conflicting claims exist between the 329 related co-pending applications identified above. However, an analysis of all claims in the 329 related co-pending applications would be an extreme burden on the Office requiring

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millions of claim comparisons.

In order to resolve the conflict between applications, applicant is required to either:

- (1) file terminal disclaimers in each of the related 329 applications terminally disclaiming each of the other 329 applications, or;
- (2) provide an affidavit attesting to the fact that all claims in the 329 applications have been reviewed by applicant and that no conflicting claims exists between the applications. Applicant should provide all relevant factual information including the specific steps taken to insure that no conflicting claims exist between the applications, or;
- (3) resolve all conflicts between claims in the above identified 329 applications by identifying how all the claims in the instant application are distinct and separate inventions from all the claims in the above identified 329 applications (note: the five examples in the attached Appendix A are merely illustrative of the overall problem. Only correcting the five identified conflicts would not satisfy the requirement).

28. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (C.C.P.A. 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (C.C.P.A. 1970); and, In re Thorington, 418 F.2d 528, 163 USPQ 644 (C.C.P.A. 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a

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nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Whether the pending claims fall under the doctrine of obvious type double patenting is a question of law. Moreover, it is understood that claim construction of patented claims is a question of law even though the underlying basis for both are questions of fact.

-it is understood that patented claims are presumed to invoke 112 6th paragraph when reciting 'means plus function language' such as 'means for'. It is understood that all 'materials and structures' disclosed, for accomplishing the 'recited functions' following the term 'for', necessarily limit the meets and bounds of such claims except when:

-the 'recited function' are later modified by one or more of the corresponding disclosed 'materials and structures' for accomplishing the 'recited functions'.

See Federal Register Vol. 64, No. 146, pages 41392-94 (listed on most recent PTO-892 form and provided therewith). All obvious double patenting rejections have been

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considered, when appropriate, in light of 112 6th paragraph.

It is not inappropriate to reject pending claims under the doctrine of obvious type double patenting even when found to contain new matter so long as the pending claims constitute 'obvious new matter'.

29. Claims 56-181 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over any single claim or combination of claims:

- claims 1-13 of U.S. Patent No. 4,694,490 ('490);
- claims 1-5 of U.S. patent no. 4,704,725 ('725);
- claims 1-25 of U.S. Patent No. 4,965,825 ('825);
- claims 1-26 of U.S. patent no. 5,109,414 ('414),
- claims 1-71 of U.S. patent no. 5,233,654 ('654),
- claims 1-56 of U.S. patent no. 5,335,277 ('277).

As the *alleged pending claim support*, Applicants rely upon, the so called '81 Wall Street Week Embodiment' (WSW). The '81 WSW embodiment corresponds to the '81 disclosed Figure 6c and is described in the '490 and '725 patents at col 19 line 31 through col 20 line 11 (48 lines in total).

Even though Applicants have alleged that all of pending claims 58-181 (126 claims in total) are 'fully supported' by the '81 WSW embodiment; Examiner rejects the *alleged pending claim support* as failing 112 1st paragraph (see above) even if the

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pending claims are obvious over the *alleged pending claim support*. However, *assuming arguendo*, that the pending claims are fully supported by the '81 WSW embodiment, it is clear that claims 1-13 of '490 and claims 1-5 of '725 cover the one and same '81 WSW embodiment. Applicants already enjoy a monopoly on the '81 disclosed WSW embodiment in terms of the WSW apparatus via patent '490 claim tree 9-13. In addition, Applicants already enjoy a monopoly on the process performed by the '81 WSW embodiment via '490 claims 1- 8 and via patent '725 claims 1-5. Moreover, Patent '490 claim tree 9-13 is so narrow in scope that it is limited to the '81 WSW embodiment's disclosed 'materials and structures' which are to taught for accomplishing the recited functions (as necessarily proscribed under the law of 35 U.S.C. 112 6th paragraph) for each case when the various recited means are not later modified by corresponding material or structure.

As such and further *assuming arguendo* that the *alleged pending claim support* is adequate or even (emphasis added) 'almost adequate', it is then legally concluded that under the judge made law of obvious type double patenting, a terminal disclaimer is necessary, since the pending claims merely reflect an obvious variant of the '81 disclosed WSW monopoly for which Applicants have long enjoyed a monopoly. As the comparisons are too numerous to make Appendix D has been attached.

It is noted that Applicants have previously alleged, in interview, that

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consideration of what is covered by the combination of Applicants multiple patented claims is prohibited when the PTO considers obvious type double patenting.

However, Examiner finds this allegation to be *wide of the mark*. When considering judge made public policy of obvious type double patenting, Examiner finds it necessary to examine **the *entire patent coverage*** already enjoyed for determining whether pending claims are obvious variations. Moreover, when the disclosed best mode is a 'unified system' as it is factually found to be for the present case, consideration of the entire monopoly (already enjoyed) is clearly more proper than a mere consideration of a portion of the monopoly already enjoyed. Notwithstanding, the above described first rubric is revisited. Entitlement to a filing date does not extend to subject matter which is not disclosed, but would be obvious over what is expressly disclosed (see 112 1st above) even though what is obvious still falls under the doctrine of obvious type double patenting. Pending claims are not patentably distinct from patented claims and pending claims are dependent upon the embodiments and subject matter for which Applicants already enjoy a monopoly.

The following are findings of fact as the instant disclosure is best understood:

The '87 disclosure described it's best mode in terms of three general embodiments:

1) 'an intermediate station embodiment' (IS). However, Applicants already enjoy a monopoly on IS both in the 112 6th paragraph limited apparatus via

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patent '414 claims 1-17, and via the process performed by IS per '414 claims 18-26;

2) 'an ultimate receiver station embodiment' (also having sub-embodiments) (URS). However, Applicants already enjoy a monopoly on URS both in the 112 6th paragraph limited sense via patent '825 apparatus claims 1-13 as well as process claims via '825 claims 14-25, as well as '277 claims 1-3, 15, 24-26, 31, 38, 52-54, and by broader (and not 112 6th paragraph limited) apparatus via '277 claims 4-14, 16-23, 27-29, 32-37, 39-51, and 55-56;

3) a 'monitoring program usage and data gathering thereon embodiment' (MDG). However, Applicants already enjoy a monopoly on MDG both in a 112 6th paragraph sense per '654 claims 1-5, 7-20, 34-36, 51, 57-71, as well a monopoly on the process per '654 claims 6, 21-33, 37-50, and 53-56.

Examiner finds that, what often falls under the first rubric described above, is that Applicants have simply drafted (regardless of their intention) a pending claim so as to constitutes nothing more than a mixing and matching of the one or more of thee three best mode embodiments that have already been patented. Moreover, each already patented best mode embodiment 1)-3), necessarily requires the other two already patented best mode embodiments:

-as strictly set forth by Applicants when making the '87 disclosure per their

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best mode; and

-as required when giving proper 112 6th paragraph claim construction to the patented terms;

Hence the unified system.

To the extent that patented claims do not already cover the pending claimed broader processes, to draft them at this late time, would have been obvious for the benefit of extending the unified system monopoly already enjoyed. Examiner finds the pending claims to be dependent upon and non-distinct (non-obvious) from patented claims.

30. Claims 56-181 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over any single claim or combination of claims:

-claims 1-13 of U.S. Patent No. 4,694,490 ('490);

-claims 1-5 of U.S. patent no. 4,704,725 ('725);

-claims 1-25 of U.S. Patent No. 4,965,825 ('825);

-claims 1-26 of U.S. patent no. 5,109,414 ('414);

-claims 1-71 of U.S. patent no. 5,233,654 ('654)

-claims 1-56 of U.S. patent no. 5,335,277 ('277)

in view of each combination of art described within this action.

Considering claims 56-181, the rejections above are incorporated by reference

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into this rejection as is the teachings of prior art with respect to 'digital' as well as with respect to the 'Level of Skill' discussion below. It is clear that no pending claim is more than an obvious variation of the patented claims when the teachings discussed throughout this action are considered. Examiner finds that Appendix D demonstrates that pending claims are obvious variants over the patented claims. However, *assuming arguendo*, they are not. The differences are suggested by the art discussed within this action (see above; see below). The provision of any such differences would have been obvious for the benefit of providing greater functionality to the user.

Level of Skill In the Art

The following discussion has been provided to establish the level of skill in the art which existed at the time of Applicants' alleged invention and, therefore, to set forth the context in which the applied prior art of record must be viewed.

1. The examiner notes that local television broadcast stations, which only served small regional areas of a country (e.g. the USA), often lacked the financial resources required to create enough original television programming to fill their daily broadcast schedules. Thus, these local television stations became "*affiliates*" of a national television broadcast network (e.g. NBC, ABC, CBS, etc,...) whereby the national television network created original network

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television programming which could be transmitted to, and commonly rebroadcast by, all of the local affiliate stations. This arrangement allowed the cost of creating such original programming to be divided amongst the affiliate stations thereby reducing the cost to any one of the affiliates.³

2. While, in practice, it was feasible to fill the affiliate stations' entire local broadcast schedules with network programming, such was known not to have been desirable. Specifically, there still remained a need to supplement said network programming with locally originated programming tailored specifically to the needs and interests of the local audiences (e.g. local news programs, local commercials, etc,...).⁴

³See, the first 23 lines In the full paragraph on page 85 of the article "Master Control Techniques" by Marsden which was published in volume 9 of the "Journal of the Television Society" in 1959.

⁴ Note the first 23 lines in the second full paragraph of page 85 of the article "Master Control Techniques" by Marsden which was published in volume 9 of the "Journal of the Television Society" in 1959.

Note: lines 2-9 in the second column on page 806 of the article "The Automation Of Small Television Stations" by Young et al which was published in volume 80 of the "Journal of the SMPTE" in October of 1971.

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3. To accomplish the above, an arrangement was established in which a national broadcast station would broadcast network programming to all of its affiliate stations in accordance with a strict network broadcast schedule. This strict network broadcast schedule included scheduled "breaks" in the network programming which were then made available to the local affiliate stations for the purpose of inserting locally originated programming.⁵ This locally originated programming was known to have included previously broadcast network programming which had been recorded for delayed rebroadcast.⁶ The resulting combined programming was then broadcast to the local audiences of the affiliate stations.
4. Early on, the local affiliate stations produced and inserted their own local programming into the network programming via a switching network which was controlled manually by local technicians. However, as technology progressed, methods for automating various aspects of the program insertion/switching process developed. Such developments included:

⁵Note the last 11 lines on page 810 of the article ... "The Automation Of Small Television Stations" by Young et al., which was published in volume 80 of the "Journal of the SMPTE" on October of 1971.

⁶See lines 25-41 in column 4 of U.S. Patent 4,025,851 to Haselwood et al. which was published on May 24, 1977.

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1) The development of automatic scheduling computers which could be programmed to execute a list of scheduled programming events whereby the list of events automatically controlled the sequence in which scheduled programming was produced and broadcast from a respective broadcast. Such computers were used to automate both the network television stations and affiliate television stations .⁷

2) The development of automated program cuing systems which include: equipment located at the national network for embedding cuing signals into the broadcasted network programming whereby said cuing signals identified the beginning and the end of each scheduled "break" in network programming, and equipment located at the affiliate stations which used the embedded cuing signals to determine the

⁷ Note: the last 11 lines on page 810 of the article "The Automation Of Small Television Stations" by Young et al. which was published in volume 80 of the "Journal of the SMPTE" in October of 1971.

Note: U.S. Patent # 3,761,888 to Flynn which was published on 9/25/73.

Note: U.S. Patent # 3,627,914 to Davies which was published on 12/14/71.

Note: the publication "Microprocessor For CATV Systems" by Tunmann et al. Which was Published by the Tele-Engineering Corp on 4/30/1978.

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respective beginning and the respective end of each scheduled network "break" and, based on this determination, automatically cause its own scheduled local programming to be inserted into said "breaks" prior to "re-broadcast".⁸

5. Because ones of the affiliate stations were located in different time zones, equipment was required to compensate the broadcasted network programming for these time zone differences, i.e. if the same network programming was to have been broadcasted at the same local time throughout the entire country. This compensation was accomplished by delaying the broadcasted network programming which was provided to a given one of the affiliate stations, via a network of recording devices, as a function of the time zone in which the given affiliate station was located. Early on, due to the high cost of this delay equipment, compensation was provided only at the central network station.⁹

⁸See: Australian Patent Document S.N. 074,619 by Hetrich which was published April 29, 1976.

See: U.K. Patent Document S.N. 959,374 by Germany which was published May 27, 1964.

⁹Note the article "Automatic Control of Video Tape Equipment at NBC, Burbank" by Byloff which was published by the National Broadcasting Company, Inc. in 1959.

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But subsequently, as the cost of the delay equipment came down and as the use of highly expensive satellite transmission paths increased, said delay equipment began be located within ones of the affiliate station locations.¹⁰ In either of these situations, when network programming was to be delayed in this manner, it was understood that any "program related data" that was carried with the network programming (e.g. such as the network cuing signals, network program monitoring codes; etc,...) also had to be delayed by the delay equipment in order to have maintained the precise timing relationship of such program related data with the said network programming.¹¹

¹⁰See: the publication "Video Banks Automated Delayed Satellite Programming" by Chiddix which was published in 1978.

See: the publication "The Digitrol 2 ~ Automatic VTR Programme Control" by Skilton which was published on pages 60-61 of the "International Broadcast Engineer" in March of 1981.

Note: lines 25-41 in column 4 of U.S. Patent 4,025,851 to Haselwood et al. which was published on May 24, 1977.

¹¹See: the first 7 lines in the first full paragraph of the third column on page 39 of the publication "Video Banks Automate Delayed Satellite Programming" by Chiddix which was published in 1978.

Note: U.S. Patent 4,025,851 to Haselwood et al. Which was published on May 24, 1977.

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The following discussion has been provided to emphasize the state of the television:

The following discussion has been provided to emphasize the state of the television/radio broadcast art which existed at the time of Applicants' alleged invention and, therefore, to further exemplify the context in which the applied prior art of record must be viewed. Support for this discussion is derived from the following prior art: 1) the publication "System and Apparatus for Automatic Monitoring Control of Broadcast Circuits" by Yamane et al; 2) the Australian Patent document No. 74, 619 to Hetrich; 3) the publication "The Vertical Interval: A General-Purpose Transmission Path" by Anderson; and 4) the British patent document No. 959,274 to Germany.

A) Contrary to the arguments presented by Applicants in related applications (e.g. S.N. 113,329)¹², it is maintained that the body of art pertaining to the broadcast of television programming the body of art pertaining to the broadcast of radio programming were, and still are, analogous arts. To suggest otherwise is to portray an unrealistically low level of skill in the art. The following facts provide evidence as to the analogous nature of these two arts:

1. First, it is noted that radio programming and television programming

¹²The Examiner notes that application S.N. 113,329 has already been cited in the record and therefore its citation by Examiner herein is not prohibited.

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were communicated through radio and television distribution networks in the same basic way/format. More specifically, both radio/television distribution networks operated to produce, sequence and distribute radio/television programming to a plurality of household radio/television receivers based on predetermined radio/television broadcast schedules. In fact, the definition of the word program, as it pertains to the broadcast environment, was/is: "a scheduled radio or television show".

2 By the fact that the actual configurations of the radio and television networks themselves mirrored each other element for element. For example, both systems comprised national/network stations and affiliated local/regional stations wherein the local/regional stations operated to selectively rebroadcast network programming, or to broadcast locally produced programming in place of the network programming, to said household receivers. Almost the only different^c between the configurations of the radio and television networks was that the circuitry needed to implement the television network was of a greater bandwidth than that of the radio network (e.g. the television network used VTRs in places where the radio network used ATRs).;

3. By the fact that the prior art of record shows that, at the time of Applicants' alleged invention, those of ordinary skill in the art themselves understood radio/television distribution networks to be "analogous arts". For

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example, this fact is clearly reflected in the teaching of Hetrich that his disclosed control signal distribution circuitry, while described in detail with respect to radio broadcast networks, could likewise have been used within television broadcast networks (see: the first 4 lines on page 2 of the Hetrich document).

B) Television and radio broadcast networks, which comprised a plurality of local/regional broadcast stations affiliated with a respective central/national broadcast station, were notoriously well known in the art at the time of Applicants' alleged invention. The central/national broadcast station of these broadcast networks operated to create national television/radio programming and to broadcast said created programming to ones of its affiliate broadcast stations. Said ones of the affiliate stations received the broadcasted network television/radio programming and then either rebroadcast said received network programming or broadcast locally produced commercials/programs in place of said received network programming. The programming that was broadcast from the ones of the affiliate stations were received by a plurality of television receivers located at the households within the local region served by the affiliates, and/or were received and processed by additional ones of said affiliate stations.

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C) In order to 1) reduce the operating costs of said television and radio broadcast networks, 2) eliminate man made errors in said television and radio networks; and 3) increase the efficiency in flow of programming in said television and radio networks (i.e. the “motion functions”), it became a desirable trend in the television/radio broadcast industries to have “automated” as much of the broadcast network process as was economically beneficial; e.g. where the term “automated” referred to the unmanned operation of network processes by machines instead of station personal (note lines 7-22 on page 5 of the Yamane et al translation). Early on, the process that was targeted for automation involved: the monitoring of broadcast programming for the purpose of determining faults/failures in the network; the monitoring of broadcasted programming for the purpose of determining subsequent program switching opportunities; the control of program flow and switching according to “confirmed program schedules”; etc, ... (note lines 9-18 on page 6 of Yamane et al translation).

D) One notoriously well known way of automating many of the processes performed by television/radio networks, was through the use of embedded “identification information signals” and “control information signals” within the

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broadcast network programming such that said embedded signals were used to monitor and identify the network programming being broadcast and were used to provide control over program switching operations of said affiliate stations (note lines 1-6 on page 2 of the Yamane et al translation; lines 11-27 on page 13 and lines 1-21 on page 14 of the Yamane et al translation; lines 16-23 on page 15 of the Yamane et al translation; the last six lines on page 18 of the Yamane et al translation; figure 1 of Hetrich; ^(lines) lines 1-10 on page 2 of Hetrich; the last 9 lines on page 10 of Hetrich; the abstract on page 77 of Anderson; and the first full paragraph under the heading "Introduction" on page 77 of Anderson). It is noted that at least the publication of Anderson recognized the fact that the versatility of this type of system automation could be greatly expanded if the embedded signals were capable of being addressed to a specific ones, and/or to specific ones, of the affiliate stations (note: the first three lines under the heading "Applications" on page 80 of Anderson; and lines 1-12 under the heading "Conclusion" on page 82 of Anderson).

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Conclusion

-Attached: Appendices A , B, CI-CXXIV, D.

-Appendix A corresponds to the administrative requirement;

-Appendix B corresponds to the Interview Summary of 1/20/99 for U.S. application no. 08/468,641. It is attached because the claims 37 and 81 referenced therein are considered by Applicants (reference paper no. 22 Sec. IIA page 50) to correspond to pending claims 92 and 142;

-Appendices CI-CXXIV correspond to the *alleged citations for pending claim support*. The pages therein have been numbered, by Examiner, consecutively from 1-216 (on the top right hand corner) for the purpose of future referencing, by Applicants', when responding to the above made requirements for reconciling the 'discrepancies of the *alleged pending claim support*'.

-Appendix D is for the obvious type double patenting rejections.

The *alleged pending claim support* has been considered in totality.
The M.P.E.P. states:

Interviews that are solely for the purpose of "sounding out" the examiner, as by a local attorney acting for an out - of - town attorney, should not be permitted when it is apparent that any agreement that would be reached is conditional upon being satisfactory to the principal attorney.

M.P.E.P. 713.03 Interview for "Sounding Out" Examiner Not Permitted.

Examiner would prefer that M.P.E.P. 713.03 be followed.

31. Any inquiry concerning this communication or earlier communications from the examiner should be directed to *William Luther* whose telephone number is (703) 308-6609. The examiner can normally be reached on Monday through Friday from 9:30 am to 3:00 pm.

32. If attempts to reach the examiner by telephone are unsuccessful, supervisor

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Andrew Faile can be reached at (703) 305-4380.

33. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-3900.

William Luther
Primary Examiner
December 25, 1999

Andrew Faile
ANDREW I. FAILE
SUPERVISORY PATENT EXAMINER
GROUP 2700